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VILLAGE OFFICERS AND SERVANTS.*

PART I.—Duties, Examinations, Dismissals, &c.

1. In the cases of dismissals of village officers holding more than one office, dismissal from one office implies, unless specially stated to the contrary, dismissal from the others also. (G. R. No. 418, dated 3rd February 1862.)

2. It is unquestionably the duty of Patels to render every assistance to travellers, whether official or otherwise, provided payment is duly tendered. (G. R. No. 1286, dated 12th April 1866.)

3. As a rule, it is necessary that Kulkarnis should reside in the villages to which they stand appointed. Exceptions may be made in the case of small outlying villages where there is no house accommodation and where the emoluments are trifling. It is in the discretion of the Collector to make these exceptions. (G. R. No. 3005, dated 23rd June 1870.)

The Collector must insist on village officers residing within their charges, diaries being instituted to ensure their doing so. (G. Rs. Nos. 5571, dated 26th September 1881, and 5698, dated 30th idem.)

4. Talátis must be obliged to reside within their charges. (G. R. No. 569, dated 21st January 1884.)

5. When there is no chora and no available house or when the saja is fatally malarious (during the season when the malaria is prevalent), the order that Talátis should live in their saja should be formally cancelled. But they should be required to visit it frequently and whenever business demands. To ensure this, they should submit a monthly diary to the Mámlátdar, who should closely scrutinize it and report every case of neglect of duty.

When there is a chora in the saja or an available house on possible terms, the Taláti is to live in it. All District officers to see that he does. Any villager, if asked in casual talk, will say where the Taláti lives if he is not led to suspect he is being asked for a purpose.

As a rule, absence without leave should not be punished with fine. It is an inappropriate punishment (if any other is possible) for a man who has to support often a large family of relations on Rs. 10 to 20 per month, and only drives him to illicit practices. A note should be made against him in the Assistant Collector's note-book and he should be formally told of it. He will dread this more than an eight-anna fine, especially if, as should be the case, two or more such notes are followed by his removal to a distant táluka. For flagrant abandonment of duty still more severe punishment is due.

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* *Vide* also "*Watans.*"

The Assistant Collector and Collector should keep a sharp look-out that the Mámlatdár does not employ Talátis on ordinary work in his kacheri, and should take strong measures to stop the practice if it exists.

All the Commissioners should consider the advisability of making all village accountants keep diaries showing from day to day where they had been residing and what work they had been doing.

(G. R. No. 5958, dated 18th July 1899.)

6. The Commissioners should look in the course of their tours into the manner in which village accountants and Revenue Patels are fined for neglect of duty, &c., by Assistant Collectors and Mámlatdárs, and take such notice as they think proper of cases in which such punishments may appear to have been indiscriminate, or in which it would, in their opinion, have been better to dismiss than fine. As these valuable public servants may be almost considered the main spring of the revenue administration, it is of great importance that their efficiency should not be impaired by injudicious treatment. Among other methods of punishment the system of inflicting daily recurring or cumulative fines (*e.g.*, a fine for every day's delay in sending in certain reports or information) is apt to run into greater extremes than the occasion may warrant, and it should be a standing order that it should not be resorted to by an Assistant without the Collector's special permission. It will rest with the Collector to determine to which of his Assistants authority to inflict penalties of this description should be deputed. (G. Rs. Nos. 2519, dated 3rd May 1873, 5139, dated 13th September 1873, and 5752, dated 17th October 1873.)

7. Usually it is better to make one or two severe examples of village accountants by dismissal or transfer to a village with smaller emoluments than to punish by frequent fines. But the power of punishment will be exercised with care and moderation. (G. R. No. 5206, dated 9th September 1881.)

8. Nothing is more calculated to excite a feeling of discontent than indiscriminate punishments of village officers for trivial mistakes, and Collectors should carefully supervise the proceedings of their Assistants in this matter. (G. R. No. 1237, dated 13th February 1893.)

9. If a warrant of attachment is issued by the Civil Court against a rayat's property which is already under attachment by the Revenue authorities, the Patel of the village, in order to satisfy the Kárkún executing the warrant and the Court that there is a *bonâ-fide* attachment by the Revenue authorities, should give a certificate to that effect, which certificate should contain a sufficient description of the property, and should state the amount of the Government demand. When an attachment has been issued in such cases by the Civil Court, the sale of the property by the Revenue authorities on

their prior attachment should be completed as quickly as the law allows. (G. R. No. 6711, dated 13th December 1873.)

10. It is the duty of Patels and Talátis, who are remunerated according to scale calculated on the revenue of each village, to protect trees as being the property of Government which yields that revenue. (G. Rs. Nos. 2731, dated 5th May 1876, and 3102, dated 25th idem.)

11. It is the duty of Patels, Talátis, Kulkarnis, and Shánbhogs to preserve, with the utmost care, all trees growing in Government waste land, or trees the property of Government, wherever they may grow.

The responsibility of these village officers will be strictly enforced in future.

(G. R. No. 1583, dated 28th March 1878.)

12. It is of vital importance that the timber and other vegetation on the slopes of the Purandhar Hill should be carefully preserved. The Rámoshis have not and never have had any claim or right to cut the trees or to injure the jungle by cultivation, or in any other way. They were its custodians, not its proprietors, and it was for its protection that they were originally granted service lands. They should be made to understand that they hold their lands on service tenure, and that they are liable to be called on to do service at any time that the state of the country may require it. In order to keep alive the right of Government to demand it, the Rámoshis of each hamlet should be called on, in turn, to provide a watchman for service with the Police on the Purandhar Fort. (G. Rs. Nos. 3014, dated 14th June 1878, 6285, dated 12th September 1882, and 8918, dated 19th December 1882.)

13. Village officers should be made to understand that they are indirectly responsible for the preservation of forests as being the property of Government. The fact that there is a forest establishment, whose prime duty is solely to look after forests, does not relieve the village officers from their share of responsibility in the matter. Accordingly, the village officers in forest villages should submit a half-yearly report on the state and condition of the trees belonging to Government in forests and málki numbers in their respective charges to the Assistant Collector in charge of the táluka, who should forward it to the Divisional Forest Officer. (G. R. No. 5062, dated 19th July 1890.)

14. Each Taláti should, in preparing his birth and death returns, account for the differences he exhibits, explaining increases and decreases by an abstract in the following form:—

Village.	*Táluka.*
Population, 1875-76	5,233
Do. 1876-77	5,684
Increase ...	451

Increase—		
Births		875
By immigration		16
	Total ...	891
Deduct Decrease—		
Deaths		430
Emigration...		10
	Total ...	440
	Net increase ...	451

(G. R. No. 1258, dated 21st August 1878.)

15. It is in every way better to register births in the place where they occur, and village officers should be instructed accordingly. (G. R. No. 4174, dated 9th August 1879.)

16. Officers should be careful to ascertain that a Kulkarni is competent to the performance of his duties before appointing him to the post. (G. R. No. 4282, dated 16th August 1880.)

17. Though opposed to a general system of rewards to village officers for the efficient performance of their duties, Government sees no objection to the grant of suitable rewards in exceptional cases, as, for instance, when a Patel, Kulkarni or Taláti shows extraordinary energy on any particular emergency, such as an outbreak of cholera, attack on the village by dacoits, the realization of the Government revenue under great difficulties, and other occasions which will at once occur to Revenue officers of experience. In such cases, the Collectors may mark the efficient service rendered by conferring on the officers, who render it, the distinction of honorary pagries to be presented by the Collector or Assistant Collector at the time of the jamábandi in the presence of the Revenue and other officers and the village people gathered on such occasions, the charge on account of such rewards being met from the Provincial Revenues. (G. R. No. 6672, dated 16th December 1880.)

18. The instructions issued by the Commissioner, C. D., in his letter to the Collector of Ahmednagar, No. 1944, dated 21st April 1883, regarding the collection of revenue by village officers, the necessary extracts from which are subjoined, have been approved by Government :—

"No hard and fast rule should be laid down, and, while holding the village officers jointly responsible for the due collection and accounting of Government money, we should allow them a small latitude in the matter which they are of course expected to use with due discretion and in view to the peculiar circumstances of each case.

"Thus if the Patel is absent on some emergent business for a day or so, the Kulkarni may be allowed to collect money and duly remit it to the táluka or keep it in his custody till the Patel comes back. The Patel is of course expected to satisfy himself of the Kulkarni's proceedings during his (Patel's) absence. In fact, the Kulkarni is always supposed, so far as urgent matters are concerned and provided there is no legal disability, to act on behalf of the Patel during the latter's temporary absence on duty.

"To sum up, it appears preferable that the revenue should be paid to the Patel in the presence of the Kulkarni, but if the former is absent, there is no hindrance whatever to its receipt by the Kulkarni. Any other ruling would not only cause great delay and irregularity in the collections, but it would be exceedingly inconvenient to the people.

"As regards the Potdárs, you are right in ordering that they should not be allowed to have anything to do with the collections."

(G. R. No. 3845, dated 19th May 1883.)

19. There is no objection to the promotions of Talátis to posts of Kárkúns. A judicious use of such promotions as rewards for good work would probably have a beneficial effect. (G. Rs. Nos. 185, dated 22nd January 1884, and 10079, dated 16th December 1885.)

20. Stipendiary Patels and Talátis are clearly salaried servants of Government for the purposes of the Local Boards Act, but Patels and Kulkarnis, who receive their remuneration in the shape of service lands, cannot be held to be in receipt of salaries. (G. R. No. 10182, dated 26th December 1884.)

21. All Patels should be warned that severe notice will be taken of any cases in which persons in the influential position of officiating village officers are found to have collected subscriptions in their villages for their own private benefit. (G. R. No. 1189, dated 9th February 1885.)

22. A person who when serving as Kulkarni commits the serious offences described in Sections 213 and 214 of the Indian Penal Code, is unfit to be again entrusted with the duties of Kulkarni. (G. R. No. 9889, dated 9th December 1885.)

23. Membership of Patels in an association formed to make public protest against Forest administration should not be visited by the suspension of the Patels from office. As landholders they are within their right of appeal against orders which affect them. (G. R. No. 2538, dated 1st April 1886.)

24. Village officers should be allowed a refund of the amount of road toll paid by them when travelling on duty, on the production by them of a certificate signed by the Mámlatdár of the táluka in which they are employed. (G. R. No. 4849, dated 8th July 1886.)

25. It appears that it is the common practice in every district in the Northern Division to employ Talátis to assist the Kárkúns in the Mámlatdár's kacheris, both on special occasions and whenever there is pressure of work. Instructions, however, should be issued to Mámlatdárs not to employ Talátis in their kacheris without previously obtaining the permission of the Assistant or Deputy Collector in charge of the táluka. (G. R. No. 8880, dated 23rd November 1889.)

26. The efficiency of the village service can be improved by requiring proof, before any Watandár is appointed to be Kulkarni, that such Watandár is competent to discharge satisfactorily the duties of the office. To the adoption of such a course no reasonable objection can be raised. It would not be too much to demand that every Watandár should, before he is nominated to the post of Kulkarni, satisfy the appointing officer that he is able to read and write well, is a fair arithmetician and possesses some knowledge of the system of village accounts.

Section 45 of the Watan Act empowers a Collector to refuse to accept the service of any representative Watandár, or of any deputy nominated by him, if he has reason to believe that such Watandár or deputy is unfit owing to mental inability to perform efficiently the duties of his office; a Watandár, therefore, who has not been educated sufficiently to do the work of a Kulkarni, is mentally unfit to officiate as such, and may be rejected.

(G. R. No. 8805, dated 15th December 1882.)

27. The test to be exacted from Watandár Kulkarnis before they are held eligible for appointment should be different from any of those prescribed by the Educational Department. It should consist of an examination in the following subjects:—

(*a*) Reading and writing the vernacular of their district.

(*b*) Mathematics up to simple interest.

(*c*) A knowledge of Hope's Forms.

(*d*) A knowledge of the Village Police Act.

(*e*) Capability to draft a short simple report regarding something that has taken place in the village.

(*f*) A knowledge of the rules for the inspection of field boundary-marks. (Appendix B, pages 121 to 124 of the Survey and Settlement Manual, 1882.)

(*g*) A knowledge of the Cattle Trespass Act rules.

(*h*) A paper on the part of the Land Revenue Code and subsidiary rules which concern the duties of village officers may also be added as a voluntary subject at the discretion of Collectors.

The rules should be applied to Watandárs appointed for life as well as those appointed for a shorter term. (G. Rs. Nos. 6031, dated 15th August 1883, 8420, dated 15th November 1883, and 3686, dated 8th May 1884.)

28. Every person about to be appointed officiating Kulkarni or deputy must first pass the prescribed examination.

The examination should be as nearly as possible just before the time when a Watandár is about to enter an office so as to test his fitness at that time. If the order is applied thus, it is not necessary to allow candidates to come up badly prepared when

their term of office is remote and make repeated attempts to pass. (G. Rs. Nos. 3686, dated 8th May 1884, and 4545, dated 25th June 1886.)

29. Questions on the subjects prescribed by Government for the examination of Watandár Kulkarnis will be set from Mr. Dhondo Gopal's "Village Officers' Manual," Part I, which should be considered as a text-book. (G. N. No. 6254, dated 4th August 1884.)

30. Watandár Kulkarnis who pass the prescribed examination in all the subjects except one should be allowed to appear again after a reasonable time to pass in that particular subject, the appointment of deputies being made temporarily by Government. (G. R. No. 1249, dated 14th February 1889.)

31. As regards the educational test to be prescribed for Patel officiators in accordance with amended Section 45 (*b*) of the Bombay Hereditary Offices Act III of 1874 as amended by Section 9 of Act V of 1886, as also under Section 30 (*c*) of the Gujarát Matadárs' Act VI of 1887, Government approve of the views expressed by the Commissioners of Divisions that ability to read the Village Police Act, to write a short report on an ordinary matter, and to read simple manuscript should be considered sufficient qualification. This test should be enforced except in cases where the Collectors consider it unadvisable to do so. No regular examination need be held. A Patel's qualifications can always be ascertained prior to his nomination. (G. R. No. 2718, dated 2nd May 1888.)

32. Government are not prepared to authorize the use of service stamps by Patels and Kulkarnis, as it would in many cases involve delay in the transmission of reports, the risk of fraud and some additional expense without adequate grounds for relieving the lower village servants of a duty which they have performed from time immemorial. (G. R. No. 5328, dated 16th July 1897.)

33. No practical objection exists against the village officers being instructed to give every assistance to bailiffs when serving processes. Collectors should therefore issue the necessary instructions. (G. R. No. 8241, dated 20th December 1898.)

B 1955—494 Rs.

PART II.—EMOLUMENTS.

1. Cash allowances in lieu of potgi should not be continued when in excess of the amount required by scale. As Wingate's Rules do not provide for the case of an addition to the arable land of the village, the provision for extra remuneration in cases regarding the increase to hereditary village officers' emoluments when jungles are sub-divided and new land becomes available for cultivation must fall wholly on Government if the watans of the hereditary officers be already taxed to the full extent; but when this is not the case, the watan land must be made liable to a further contribution to remunerate the officiator. A revision would, therefore, be requisite whenever lands have been added either owing to this cause or to lapses of ináms. (G. R. No. 397, dated 30th January 1860.)

2. As survey rates include all direct levies, the village officers cannot be permitted to levy haks in excess of the authorized assessment.

The proper payment of village officers is part of the survey system which must be maintained in its entirety. In a wholly alienated village the Inámdár must, therefore, provide for the remuneration of the village officers according to scale, as he receives the whole of the revenue derived from the village. (G. R. No. 686, dated 20th February 1860.)

3. To allow remission to village officers for the judi of their lands, when waste or uncultivated, will be a retrograde step. It would be a return—though a partial one as affecting only a particular class—to the old system of annual remissions, and the character of the transaction would not be altered by limiting it to the Patels' and Kulkarnis' lands excluding all record of it from the Táluka and Huzúr accounts. (G. R. No. 2461, dated 9th July 1860.)

4. Patels and Kulkarnis wishing to resign their inám lands and to receive instead a full money payment according to scale should be permitted to do so. (G. R. No. 3839, dated 24th October 1860.)

5. The Collectors in districts where Wingate's scheme of settlement regulating the scale of remuneration of village officers has been introduced, are not authorized to deviate from the rules laid down and sanctioned for their guidance. They must submit explanation of the grounds for any proposed deviation, and obtain the authority of Government to the measure. (G. R. No. 732, dated 11th February 1861).

6. The percentage remuneration of village officers on the summary-settlement collections should not be calculated separately, but as part of the general land revenue of the village. But it would not be equitable to refuse a re-adjustment of the five years' average when the collections from this source of revenue amount to a considerable

sum. Whenever the collections from the summary settlement amount to 10 per cent. on the revenue upon which the average was fixed, the summary-settlement collections should be added to the average as formerly ascertained and the haks of village officers re-adjusted. (G. R. No. 3442, dated 11th September 1862.)

7. The remuneration to be allowed to Patels and Kulkarnis of alienated villages on all items of land revenue as detailed in the margin* levied by them for Government from such villages should be fixed for the Patel at the rate of a quarter of an anna and for the Kulkarni at the rate of half-anna on each rupee collected. To avoid, however, the labour which this practice entails on the Huzúr and Táluka establishments of preparing annually statement of remuneration to be paid to the village officers, the emoluments of these officers should be fixed on the average of five back years' revenue collected by them, and they should be paid at this rate for ten years to come. The Kulkarni is to defray whatever charge may be necessary on account of stationery, &c. In villages in which a Patel has a service inám and allowance amounting together to Rs. 120, or a Kulkarni to Rs. 240 per annum, nothing should be paid to them. They must collect the Government dues from alienated villages in consideration of the enjoyment of their old ináms and allowances only. (G. Rs. Nos. 1861, dated 5th June 1863, 1654, dated 16th March 1876, and 3088, dated 12th June 1879.)

*1. Chauthai and Nazarána or quit-rent under any denomination paid by alienees themselves and others under every description of summary settlement.
2. Revenue from lapsed Ináms or Shetsandi lands.
3. Mámul Judi paid by alienees and others.
4. Sale of fruit trees and other such items of land revenue.

8. A tenant of an Inámdár would clearly appear to be a person occupying immoveable property free from assessment under Section 17 * of the Watan Act,

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* As regards the construction of the section, *vide* the following judgment of the Bombay High Court, copies of which were forwarded to the Collectors and Commissioners of Divisions with Government Resolution No. 9811, dated 30th November 1894:—

Appeal No. 62 of 1893 from Original Decree.

Anantacharya bin Hariacharya Jágirdár (Original Plaintiff) .. .. } Appellant

versus

The Secretary of State for India in Council and others (Original Defendants) ... } Respondents.

Appeal from the decision of Venkatrao R. Inámdár, Esquire, Assistant Judge, F.P., of Bijápur, in Suit No. 1 of 1891.

Mr. Shamrao Vithal for the appellant.

The Government Pleader for respondent No. 1.

Judgment.—In this case the appellant (original plaintiff) is the Inámdár of Ankalgi in Bijápur Táluka. Respondent, defendant No. 3, is the Watandár Kulkarni of the village, the watan being described as kadim watan. The watan property held for the performance of the duties consists of a cash payment of Rs. 5,

1874). It seems immaterial whether the cultivators do or do not pay rent to the Inámdár. It is sufficient that no assessment is paid to Government. (G. R. No. 7884, dated 26th December 1881.)

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and inám lands assessed at Rs. 60. Defendant 3 failed to perform the service himself, or to appoint a deputy. Defendant No. 1, represented by the Collector of Bijápur, thereupon appointed defendant No. 2 as deputy, and defendant No. 2 officiated from 20th November 1884 to 4th December 1886. Defendant No. 2 applied for suitable remuneration, and defendant No. 3 agreed to pay him Rs. 80 a year, which sum was accordingly paid in part by, and levied in part from, defendant No. 3. Subsequently defendant No. 2 applied to the Collector for an increased remuneration according to the scale fixed for Government villages, and the Collector on 2nd December 1887 ordered the plaintiff to pay the increased remuneration so as to make up the full amount due under the Wingate scale, and on 26th September 1890 a sum of Rs. 171 was recovered from the Inámdár plaintiff. Plaintiff claims that this sum was illegally levied from him, and he seeks in this suit to recover the same with interest.

Defendant No. 1 pleaded that, on the application of defendant No. 2, the Collector, acting under Section 17 of Bombay Act III of 1874, determined the amount payable by plaintiff as remuneration to defendant No. 2, and under Section 81 levied the amount. The amount awarded was Rs. 158-15-8, and the sum levied was Rs. 171. Defendant No. 1 gave notice to the plaintiff to take back the excess (Rs. 21-6-4), but he refused to do so at the time, though the sum was, since the institution of the suit, received by the plaintiff. Defendant No. 1 contended that he was not liable to the plaintiff, who had no cause of action as against him. At a late stage it was also urged that the suit could not be maintained under para. 3, Section 4, of Act X of 1876.

Defendant No. 2 urged that plaintiff had no cause of action against him, as he was entitled to receive the remuneration fixed according to the scale.

Defendant No. 3 did not appear to defend the suit.

The Assistant Judge held (1) that the suit was not barred under Section 4 of Act X of 1876; (2) that plaintiff, and not defendant No. 3, was liable to make good the remuneration as fixed by the Collector; and (3) that plaintiff's claim could not be awarded.

Plaintiff appealed from this decree on several grounds which it is not necessary here to state in full, as his pleader chiefly relied upon the contentions raised in the 3rd and 5th objections in the memorandum of appeal—namely, that the Collector had no power to raise the scale of payment, and that the Assistant Judge erred in not finding expressly whether the Collector could, under Section 17 of the Vatandárs' Act, order plaintiff to pay the enhanced amount. Mr. Shamrao, the appellant's pleader, urged that the plaintiff, as Inámdár, could not be saddled with any payment not included in the sanad, and that the Collector's procedure was defective in that he held no inquiry under Section 73 before he passed his order, and further that the Collector was bound to obtain the sanction of Government under Section 21 of the Watandárs' Act. He also urged that Section 17 of the Act applied only to old customary payments in kind or money, and at the most under Section 23 the Collector could only grant increased remuneration from the watan property, and he had no power to levy the same from the revenues of the village.

The Collector professedly passed his order under Section 17 of the Watandárs' Act, and the chief question we have to consider is, whether that section, or any other section gave authority to the Collector to require plaintiff to make up the deficient amount of defendant No. 2's remuneration according to the scale in Government villages.

On a careful consideration of the several provisions of Bombay Act III of 1874, we feel satisfied that appellant's contention is well-sustained, and that neither Section 17 nor any of the other provisions of the Act authorized the procedure followed and the order issued by the Collector. Section 17 must be read along

9. The haks which a Kulkarni is entitled to recover from the cultivators of an inám village are not "charges on the revenue or rent of villages, or other defined portions of territory.' They are pay-

with the other sections which together form Part 3—headed the Commutation of Watans as opposed to Part 4 which relates to the creation or lapse of a watan. This heading of commutation is itself suggestive of a strict restriction on the exercise of the powers conferred on the Collector. Section 15 empowers the Collector to relieve a Watandár of his liability to perform service, but this relief is under Section 16 not to affect the rights of individuals or village communities to exact customary services from village servants, the relief extending only to the service due to the State. Next comes Section 17 with its complementary Sections 18 and 19, the former applying to payments in kind or money made to Watandárs by Jághirdárs, Inámdárs, Mewási Chiefs, or others, owning or occupying immoveable property wholly or partially free from assessment, while the latter sections relate to the inferior watans, where the payments in money or kind are due to the Watandár from individuals generally, without any particular specification. In the case of the holders of alienated lands, the Collector is himself to determine the amount of the payments due to the Watandárs. In the case of cultivators generally, the inquiry is to be entrusted to a Panchâyit, and if the Panchâyit fixes profits which are of a fluctuating nature, the Collector is empowered to determine the amount payable. The words used both in Sections 17 and 19 are exactly the same, and they must be construed alike. These amounts so determined under Sections 17—19 are, moreover, to hold good for such period as the Governor in Council may from time to time direct.

It is thus plain that Section 17 clearly relates to the power of the Collector to determine payments of a fluctuating character. The word "watan" property, as defined in Section 4, expressly includes not only property assigned or held for service, but also a right to levy customary fees or perquisites in money or kind, whether at fixed times or otherwise. It is the commutation of these customary and fluctuating demands which is provided for in Sections 17—21. Unless the payments claimed already formed part of the watan property by force of custom, there is no foundation for the exercise of the authority to determine their amount conferred by these sections. The payments and the right must exist beforehand, and then, if the payments or the right is of a fluctuating or indeterminate character, the Collector in the one case, and the Panchâyit in the other, can determine the amounts of *such* payments (Section 17), and *such* rights and duties (Section 18). In the present case it is admitted that the Inámdár has only been paying Rs. 5 in cash to the Watandár. The Collector had, therefore, no occasion to determine the amount as it was not of an uncertain nature. It does not follow from the fact of this payment of Rs. 5 in cash, that the Collector had authority, under Section 17, while professing to determine the amount, to raise the cash payment from Rs. 5 to Rs. 80. The Collector can only determine the amounts of *such* payments as were already payable, and it is not open to him under this section to increase the amounts as he has done in this case.

This view of the scope of the section is strengthened by the fact that in the first draft of the Bill, the words used were that "it shall be lawful for the Collector to assess the amount of *such* payments recoverable upon an average of the 10 years next preceding." This limit of 10 years' average was subsequently given up, and in its place the proviso was added that the amount to be determined was to be equivalent to the amount payable under the scale in force for the time being in the case of Government villages. These words were not intended to refer to the scale of remuneration fixed by Government, known as the Wingate scale, for this latter scale has no reference to uncertain customary payments of the kind contemplated in Sections 17—21. Under Section 216 of the Land Revenue Code, the holder of an alienated village is not bound by the provisions of Chapter VIII relating to survey settlement, not introduced with his consent, which was the case in plaintiff's village.

A number of opinions of the Legal Remembrancer to Government have been filed in this case on defendant No. 1's behalf.

ments for which the cultivators are liable to the Kulkarni in addition to the rent, if any, which they pay to the Inámdár and are not recoverable from that rent. Moreover, it cannot reasonably be con-

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Such opinions cannot well be admitted in evidence, as they are opinions given in a one-sided inquiry. Such as they are, they do not go far enough to support defendant's contention. In one, Exhibit 22, however, it is stated that there can be no objection to the Collector proceeding under Section 17, and if the Inámdár objects, he is required to report for further orders. In another, Exhibit 20, it is stated that there can be no injustice in *primâ facie* holding that Section 17 applies, and the Inámdár may be left to show cause to the contrary. In a third it is directed that the defect in the law should be noted when the Act is next amended. No value can attach to opinions so obviously one-sided and halting.

We feel satisfied accordingly that Section 17 cannot be regarded as authorizing the interference of the Collector in this case. We have next to see if any other section can be held to support it. The Collector had no doubt power under Section 36 to appoint a deputy, and such a deputy would be an officiator under Section 3. Under Section 23 the Collector had power to fix the annual emoluments of the deputy and to direct the payment thereof to the officiator. These words are large enough to cover the order issued by the Collector in this case, but the second paragraph of this same section provides a limitation on this power, in that it directs the Collector to assign watan property as the profits thereof towards the emoluments of officiators. The emolument is to come from the profits of the watan. This was in fact the procedure followed by the Collector in this case in the first instance, when he directed defendant No. 3 to increase the amount of the remuneration payable to defendant No. 2. Section 23 does not authorize the subsequent procedure of the Collector when he ordered plaintiff to make good the deficiency. The scale in British territory was not obligatory on the plaintiff. It was, moreover, only a maximum limit. Defendant No. 3's inám land was assessed at Rs. 60. Plaintiff, however, was not bound by this limit, as he did not accept the survey settlement. Plaintiff in fact asserted that the land yielded a profit of Rs. 105, and his assertion was not challenged by defendant No. 3. This resource was open to the Collector to make good the deficiency. Anyhow Section 23 no more than Section 17 authorized the Collector's procedure so far as plaintiff was concerned. Section 16 of the Land Revenue Code also does not provide for the present case, because it does not extend to alienated villages. We accordingly hold that the levy of Rs. 171 made by the Collector was one not authorized by law, and that, under the circumstances, plaintiff has a right to recover the amount minus the sum of Rs. 21-6-8 already received by plaintiff. Defendants Nos. 2 and 3 need not have been made parties to the suit.

At a late stage of the suit, as also in the argument before us, it was urged that the present suit was not maintainable under paragraph 3, Section 4, of Act X of 1876. If the Collector had *primâ facie* jurisdiction to pass the order he did, plaintiff would certainly have no right to sue to set aside or avoid the order. As it is, the Collector had no power to levy the money from plaintiff as ordered by him. The order was not passed by Government, and the Collector cannot be regarded as having been duly authorized to act illegally and without jurisdiction.

We accordingly reverse the decree and direct defendant No. 1 to pay Rs. 149-9-4 with costs to plaintiff. We disallow interest. Defendant No. 1 should bear his own costs, and plaintiff should pay the costs of other defendants Nos. 2—3.

M. G. RANADE.

12th July 1894.

This appears to be the first case in which the construction of Section 17 of Bombay Act III of 1874 has come before this Court. I concur with Mr. Justice Ranade in holding that the order made by the Collector is not one that can be made under Bombay Act III of 1874, and that it is *ultra vires* of Section 17,

tended that the words "villages or other defined portions of territory" include cultivators' holdings. For these reasons it cannot be held that such haks as those in question are covered by the definition of

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which is pleaded for the Collector as giving warrant of law. I am of opinion that the payments to which Section 17 refers are those mentioned in Section 4, where it is said the term watan property "includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise." What the Collector did is analogous to what may be done under Section 22; but while that section places the cost of creating new watan on the Government, the Collector has placed that of the additional watan property his order seeks to create upon the Inámdár. The words of the two Sections 17 and 22 differ much; and we may therefore infer a different meaning in each, especially as Section 23 limits the Collector to the existing watan and its profits in assigning emoluments to the officiator. Under Section 17 "the Collector may from time to time determine the amount of such payments recoverable" from the Inámdár. As the scope of the section appears to be misunderstood, perhaps because the old order of things is changed, I may refer to the earlier printed records of Government where the nature of these payments is described. In Mountstuart Elphinstone's Report on the Deccan, the following statements are made:—that the Patels are entitled to lands and fees, and have various little privileges and distinctions of which they are as tenacious as of their land; that the Kulkarni has lands but oftener fees; that the Deshmukh besides percentages on the revenues collected has various claims in kind, as a pair of shoes every year from each shoe-maker, a portion of ghee from those who make that preparation, &c., &c., that the watchman was paid by a small share of the grain and similar property belonging to each house, which kept him always on the watch to ascertain his fees, whereby he knew all that took place. In the appendix to Mr. Elphinstone's Report is one from Captain Grant, Political Agent at Sátára, which refers to payments in grain or money to Patels and Kulkarnis, called Mushaira and Sirpao. The knowledge of these customary payments was present in 1874 to the framers of the Watan Act; and in such a matter I can hardly refer to a higher authority than the Honourable A. Rogers, then Revenue Member of Council, who gave his reason for proposing the inclusion of customary fees in Section 4 by making an historical statement as follows on the 24th August 1874, when Section 17 was finally settled by the Bombay Legislative Council. "In different parts of the country it was the custom to levy fees and perquisites for service in various ways, sometimes in money and sometimes in kind." I notice too that on the 15th October 1874 when the Bill was passed, the Honourable F. S. Chapman, then Chief Secretary to Government, spoke of it as intended to build up from their foundations the ancient village forms of Government: and one means of doing this was by making the Collector's kacheri a tribunal where the village servants of inferior status, like the Mhárs, could enforce their rights to their customary fees from the rayats.

This look into the past revenue history enables us to find appropriate meaning for Section 17; and fortifies the conclusion we arrive at through the rules for interpreting statutes. The function of the Collector does not extend to the whole watan property but only to what is meant by the words "such payments." It is merely one of commutation of payments of uncertain amount by ascertaining a fixed equivalent therefor, which apparently he may express either in money or kind. There is no warrant whatever in the language of Section 17 for supposing that he could thereby impose new burdens on the landowner in a case like this, where the payment being constant already there was nothing to determine. He resembles the Land Commissioners in England under the Tithe Commutation Act or the Copyhold Acts where provision is made for ascertaining the value of such rights as heriots. But though it is not necessary for our decision to interpret the word minutely, I think the addition of the word "recoverable" in Section 17 has reference to Section 81 (though possibly it may be argued that it bars a civil suit, a matter on which I express no opinion); and that

the word 'land' in Section 3 (4) of the Land Revenue Code, and that the Kulkarni, who is entitled to receive such haks, is in respect thereof a superior holder.

Section 17, Bombay Act III of 1874, is the law which applies to haks such as those in question. The Collector is encountered by the difficulty that in unsurveyed inám villages he cannot tell whether the aggregate of the haks would or would not be more than "equivalent to the amount that would be payable under the scale in force for the time being in the case of Government villages," and therefore cannot tell whether in determining under that section the amount of payments recoverable by a Kulkarni, he transgresses the proviso to the section. It is considered, however, that an approximate estimate of the amount that would be payable if the village were a Government village will sufficiently satisfy the proviso, and that such estimate may be based upon general considerations without requiring the detailed particulars obtainable in a surveyed village.

(L. R. No. 575, dated 5th May 1886; *vide* G. R. No. 3786, dated 26th idem.)

10. Section 187 of the Land Revenue Code provides that "all sums declared by * * * any * * Act * * at the time being in force to be leviable as * * * an arrear of land-revenue" shall be levied under the foregoing provisions. Payments by Inámdárs to Watandárs, of which the amount is determinable by the Collector under Section 17 of the Bombay Hereditary Offices Act, 1874, are so leviable, though the point is not free from doubt. The provision which applies is Section 81 of the last-named Act. It says:—

"All recoveries of profits from land, assessments, emoluments or penalties under this Act may be made as provided by any law for the time being in force relating to the recovery of land-revenue."

It is not very clear what the intended force of the words "under this Act" is. If recoveries under the Act are meant, then there is no provision in the Act concerning the recovery of the payments in question. But it seems that the more probable meaning of the section is that "profits" from land assessments, emoluments, or penalties, *determined or*

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what the Collector fixes is the amount which may be recovered by revenue process; he is not to recover more from the Inámdár than is payable in Government villages for the same thing or on the same occasion. Thus the coercive action of the Collector is limited by the customary scale of the country as in some other revenue matters. The Collector's award of commutation appears not to be so final a judgment, as a decision under Section 18. But for the addition of the word "recoverable" I would interpret the word "determine" as was done in *The Queen* v. *The Land Commissioners of England* (1), where that word in the Copyhold Act, 50 and 51 Vict., c. 73, was held to give finality.

(1) L. R., 23 Q. B. D., p. 59.

We agree that the plaintiff has no cause of action against the defendants 2 and 3, and in the decree to be made by this Court

JOHN JARDINE.

12th July 1894.

fixed under this Act" should be recoverable as therein laid down.

(L. R. No. 455 dated 7th April 1883; *vide* G. R. No. 3378, dated 2nd May 1883.)

11. The claim of village officers in inám villages to receive their remuneration direct from the village revenues instead of from the Inámdárs is inadmissible under Section 187 of the Land Revenue Code read with Sections 17 and 81 of the Watan Act. If the Inámdárs decline to pay the remuneration according to scale, steps can be taken according to law to enforce payment. (G. Rs. Nos. 3378, dated 2nd May 1883, 1166, dated 13th February 1886, and 3320, dated 5th May 1886.)

12. The proceedings reported by the Revenue Commissioner, N. D., in his following letter No. 3432-B, dated 29th October 1864, were approved and sanctioned by Government:—

"I have the honour to report, for the information of Government, the settlement I have made of the emoluments of Patels in the Daskroi Táluka of the Ahmedabad Collectorate.

"2. Major Wingate's scale has been taken as the basis of the settlement, with some modifications and additions which are described below.

"3. Major Wingate's system allows an increase of Rs. 10 over the percentage amount fixed according to his scale. As this increase appeared too large in small villages, I have in the Daskroi settlement reduced it to Rs. 5 in all villages the revenues of which are under Rs. 600 per annum.

"4. But while making this decrease in small villages I have allowed, under certain special circumstances, a somewhat higher remuneration than prescribed by the old scale These circumstances arise from a Patel having heavier work to perform, either in consequence of the villages being situated on much frequented high roads or at a distance from the Mámlatdár's office, or in consequence of their bordering on foreign territory. The fact of a village having a more than ordinarily large population is also a special circumstance to be dealt with in the same manner. This plan is fair, as it secures additional payment for additional responsibilities, instead of remunerating at an equal rate those who have unequal duties to perform.

"5. The Patel's remuneration is in cash or in land, or in both, and to equalize the value of these receipts the profits of occupancy of land have been taken into account, the amount so calculated being in no case reckoned at more than a sum equal to the assessment fixed by the survey. Thus, if a Patel be in possession of service land assessed at Rs. 25, he is considered as well off as a Patel who receives Rs. 50 from the Treasruy.

"6. Of the amounts thus fixed according to principles above mentioned, portions varying from one-fourth to one-half, according to the circumstances of each case, are to be allowed to the Matádárs or Patels and to co-sharers who assist the Patels. But in no case are the Matádár's present receipts to be exceeded at the expense of the Patel's.

"7. If in any case the present emoluments of the Patel exceed the amount fixed as above described, so much of the cash receipts as equals the excess is reduced, or, if there be no cash, a portion of the land of the same amount is assessed. This reduction is made from the 'Mukhi' portion of a Patel's holdings, which, as having been granted

by the British Government for the performance of Police duties, can without objection from any one be increased or decreased as may be deemed proper. In cases where the existing emoluments are less than the scale, the deficiency is made up in cash.

"8. I have also, with reference to my communication noted in the margin, to report the settlement of the contingent allowance (to be called the chora kharch)* to be given to Patels in lieu of, and out of the savings from, the malviro payments abolished. This contingent allowance has, as a rule, been fixed at double the amount given to Talátis for stationery under Wingate's scale, but in villages of the kind referred to in paragraph 4, it has been fixed at three times the Taláti's allowance. This payment will be defrayed, as already stated, in the repair, lighting and clearing of the village choras, and in whatever further expenses connected with the village the body of Patels may desire. Patels will not be liable to account for the expenditure."

No. 1525A, dated the 23rd May 1864.

(G. R. No. 4646, dated the 23rd November 1864,)

13. The rules regarding the remuneration of Patels and Kulkarnis given at pages 347—357 of the Survey and Settlement Manual are inapplicable to Gujarát, where the rules sanctioned in Resolution No. 4646, dated 23rd November 1864, are still in force. The Governor in Council would, however, impress on the Collectors the desirability of fixing the remuneration of the Watandár officers as soon as a revision settlement is introduced. (G. R. No. 1822, dated 11th March 1893.)

14. The Collector's signature should be held sufficient by the Accountant General's Department for admitting statements of fixed payments to district and village hereditary officers, but the Collectors should distinctly understand that they are really responsible. (G. R. No. 6085, dated 4th December 1871.)

15. Notice fees and fines for unpunctual payment of instalments should not be taken into calculation in fixing village officers' emoluments. (G. R. No. 5304, dated 15th September 1876.)

16. The following are the rules for dealing with the village officers' service lands:—

Definitions.

(1). "Watan land emoluments" consist of the difference between the original judi or Government charge on the whole lands of the watan and the full survey valuation or assessment thereof for the time being.

(2). The appropriated amount of the watan land emoluments consists of the sum imposed in the form of an addition to the original judi to

* The contingent allowances called chora kharch sanctioned by Government Resolutions No. 4646, dated 23rd November 1864, and No. 3040, dated 30th August 1867, were assigned to each village separately. Patels were exempted from liability to account for the expenditure of them, but the rule referred to in paragraph 13 of the letter of the Committee appointed to report on the audit of cash allowances, sanctioned by Government Resolution No. 3517, dated 9th August 1861, to the effect that if village petty charges are not disbursed within the year in which they are due they are forfeited, is obviously applicable to the chora kharch allowances. (G. R., F. D., No. 4042, dated 12th November 1883.)

meet, so far as it can, the remuneration of the officiator as fixed according to the orders of Government from time to time.

(3). The unappropriated watan land emoluments consist of that portion of the difference, if any, between the total watan land emoluments at any time and the amount appropriated at any time for the remuneration of the officiator according to the last paragraph.

Rules.

(1). The mámul or ancient recorded judi, or the highest recorded ancient payment, whichever may be the higher of these two sums, shall be considered to be the ultimate limit of judi or Government charge upon the service inám watan lands of village officers exclusive of any charge which it may seem fit to Government to impose for the remuneration of the member or members of the watan appointed by Government to officiate, so long as such charge on account of remuneration of service together with the original judi does not exceed the survey assessment for the time being of the whole lands of the watan.

(2). The watan emoluments are liable for the payment of the officiator up to their whole survey valuation as at any time fixed; and any portion of this valuation in excess of the requirements at any time for the payment of the officiator may be appropriated at any future time if it is in the opinion of Government necessary to increase the sum payable to the officiator.

(3). In Government letter No. 331* of 26th January 1860 it was decided that in commutation of enquiry by the Inám Commission into the title on which unappropriated watan land emoluments were held, additional judi of one-half the survey assessment for the time being should be levied on the unappropriated amount. It is now clearly ruled that upon its being necessary to add to the remuneration of the officiator or officiators, all such excess watan land emoluments are liable up to the full survey assessment for the time being. It is, however, laid down that the above half judi is not liable to increase on account of the unappropriated watan land emoluments for the time being attaining an increased valuation under a revision of assessment; but it is also to be understood that such judi may be lowered owing to a decrease in the value of the unappropriated watan land emoluments rendering the judi formerly fixed thereupon more than half their value for the time being, or as above provided owing to a portion of the excess watan

* Government letter No. 331, dated 26th January 1860, is transcribed below for ready reference:—

"In the rules framed by Major G. Wingate for the settlement of the emoluments of Hereditary Patels and Kulkarnis, it was provided that the proceeds of a watan in excess of the amount required by scale to remunerate the officiating mem-

land emoluments being at any future time appropriated for the payment of the officiator.

(4). The scale of percentage remuneration adopted hitherto for Patels shall continue in future. But the increased chávdi and potgi or extra allowance proposed for Patels by Colonel Francis in his letter No. 1513 of the 24th September 1874 and sanctioned by Government Resolu-

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bers should lapse to the State on the change of present incumbents if the excess were in cash, and should be liable to scrutiny and subject to the final decision of the Inám Commission, if in land bearing a greater assessment than Rs. 20.

2. But as it is proposed to supersede the detailed enquiries of the Inám Commission by a summary settlement of alienated revenue, this last provision is no longer applicable.

3. At the same time the principle already applied must be adhered to as closely as possible for the remainder of the thirty years for which the village officers may have presumed that their emoluments are fixed in connection with the guarantee of rate of assessment for the same period.

4. The only point, therefore, in which His Lordship in Council conceives that any change should be made in regard to settlements already concluded and sanctioned, is the enquiry of the Inám Commission, to which the watans are to be subjected according to the rules.

5. His Lordship in Council has been pleased to decide that, in substitution of this enquiry, the excess of land remaining after providing for the officiator's remuneration shall be taxed by a judi to the extent of one-half of such excess, the whole excess, however, being confirmed to the holders as part of the watan.

6. In other respects, the settlements already made will remain unaltered during the thirty years for which the assessment of the district is guaranteed.

7. The portion of the watan held in excess of the officiating member's emoluments will be liable to no further contribution within this period, except in the event of the amount of arable land in the village being added to, and the kamál or limit of assessment being thus increased either by the lapse of ináms or by bringing under cultivation new tracts of jungle land.

8. The emoluments of the officiator being revised decennially the rest of the watan will, if necessary, come under revision at the same time, but if the increase from the causes noted in preceding paragraph do not amount to 10 per cent., no alteration should be made in respect to the amount of judi imposed on the watan lands.

9. All excess below Rs. 20 was exempted from enquiry by the Inám Commission, and, in districts already settled, the tax imposable by paragraph 5 of this letter should not be imposed in cases in which the excess does not amount to Rs. 20.

10. But as the cause of this reservation no longer exists, His Lordship in Council is of opinion that in all settlements, now being made, or which will in future be made, the restriction should no longer hold good; and watans, in which the excess is below Rs. 20, will be treated in the same way as others.

11. Another modification which it appears to His Lordship in Council should be made in future settlements, is to change the order in which the different items composing a watan are taken into calculation in providing for the remuneration of the officiating members. Now that the excess is not to be enquired into by the Inám Commission, the order of calculation should be altered.

12. Thus the whole of the land will be first assessed for the remuneration of the officiator—if this do not suffice the Purbharra Haks (estimated as before) and then the cash from

tion No. 6141. dated 1st November 1875, should be adopted.*

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the Treasury will go to make up the deficiency—the balance, if required, being as hitherto made up by payments from the Treasury.

13. By these means the State will receive the benefit of the lapse of cash allowances on the change of present incumbents, so as to make up, to some extent, for the extra amount which has to be contributed from the Treasury.

14. These principles of settlement should be applied to the remaining mahâls in Collectorates in which the former rules have already been partially acted on. In other Collectorates in has already been determined to proceed on a basis different from that on which settlements were effected at a time when it was proposed to try the claims of village hereditary officers by the tribunal of the Inám Commission."

The words "cash allowances" in paragraph 13 of the foregoing letter should be understood to include both cash allowances payable from the Treasury and cash compensation for abolished Purbharra Haks. (G. L. No. 832, dated 2nd March 1860.)

The settlement referred to in paragraph 1 of Government letter No. 331 of 26th January 1860 has been generally adopted in the settlement of village officers' cash haks in the Deccan and Southern Marátha Country.

2. But it appears that a deviation from the general rule was recommended by Major Wingate so far as regarded the Marátha districts (as distinguished from the Kánarese districts) of Sholápur. The recommendation appears to have received the sanction of Government in their Resolution No. 7421 of the 23rd December 1853, the modification of Major Wingate's proposals ordered in the concluding paragraph thereof being limited to the Kánarese districts.

3. On the principle laid down in the 3rd paragraph of the Government letter of the 26th January 1860 above quoted, the Governor in Council would leave this portion of the settlement untouched until the haks of village officers are revised on the next revision of assessment. It was determined that the Marátha districts of Sholápur should be treated differently from other districts, in respect to the cash portion of village officers' emoluments, and without enquiring into the principles on which the distinction was drawn, the Governor in Council thinks that it must be upheld for the term of the survey settlement, and that their districts must continue to be treated exceptionally.

(G. R. No. 2173, dated 14th June 1860.)

* This is as follows:—

Population.		Potgi.	Chávdi expenses
From	to		
1	100	2	2
101	200	3	3
201	300	4	4
301	400	5	5
401	500	6	6
501	600	7	7
601	700	8	8
701	800	9	9
801	1,000	10	10
1,001	1,200	13	13
1,201	1,300	14	14
1,301	1,400	15	15
1,401	1,500	16	16
1,501	1,600	17	17
1,601	1,700	18	18
1,701	1,800	19	19

(5). As regards the Kulkarnis, the percentage scale on which they are already paid being found sufficient should be retained both for salary and stationery allowance, as sanctioned in Government Resolution No. 6141, dated 1st November 1875, paragraph 4, with the modification as regards increased potgi or extra allowance sanctioned in Government Resolution No. 991, dated 15th February 1876.*

(6). In towns and very large and troublesome places an additional payment may be awarded to officiating Patels. At present under Wingate's rules an additional allowance of Rs. 10 is awardable to Patels of large places. It is now provided that there shall be three additional classes of such special allowances; the four classes will then stand as follows:—

	Rs.
Class IV	10
„ III	20
„ II	30
„ I	50

Population.		Potgi.	Chavdi expenses.
From	To		
1,801	2,000	20	20
2,001	2,200	23	23
2,201	2,300	24	24
2,301	2,400	25	25
2,401	2,500	26	26
2,501	2,600	27	27
2,601	2,700	28	28
2,701	2,800	29	29
2,801	3,000 and upwards	30	30

(G. R. No. 6141, dated 1st November 1875).

Note.—In Government Resolution No. 5304, dated 15th September 1876, it was ruled that in cases in which a Patel's emoluments would be lessened in consequence of potgi being calculated on population instead of on revenue, a special allowance to the then officiators might be made so as to bring the new up to the old allowance, and that the oversight by which Patels' emoluments had continued to be calculated on the mámul rates beyond the time of existing officiators, for which period only its continuance had been sanctioned by Government, should not be allowed to operate to the prejudice of the interests of the State.

* This is as follows:—

Revenue of villages ranging from	Scale payment.	Potgi.	Total allowance.
	Rs.	Rs.	Rs.
Rs. 801 to 900	45	10	55
„ 901 to 1,000	50	10	60
„ 1,001 to 1,100	54	10	64
„ 1,101 to 1,200	58	10	68
„ 1,201 to 1,300	62	10	72
„ 1,301 to 1,400	66	6	72
„ 1,401 to 1,500	70	2	72
„ 1,501 to 1,600	74	...	74

(G. R. No. 991, dated 15th February 1876.)

(7). The whole emoluments of village officers, whether consisting of salary, potgi or extra allowance, special allowance, or stationery allowance, are payable from the watan emoluments so far as they are capable of meeting these charges.

(8). On revision of assessment, all service inám lands of every head, whether those of village officers or servants, and whether held by officiators or others, shall be liable to pay local one anna cess on their survey valuation in common with all other lands.

(G. R. No. 7651, dated 28th December 1877.)

Note.—In a Resolution dated 21st June 1881, the revision survey rates in certain villages were approved by Government, but the introduction of those rates was deferred till 1883-84, and Government directed that a temporary settlement should be in force, under which the old rates of assessment *plus* an addition of 3 annas in each rupee of the assessment were to be levied. It was held in Government Resolution No. 3377, dated 2nd May 1883, that this temporary settlement could not be regarded as the revision of assessment contemplated in Rule 8 of the foregoing rules.

17. The orders in Government letter No. 331, dated 26th January 1860, are far from clear in expression, but they distinguish settlements already made from those to be made in future. In the former the principle previously applied was to be adhered to,—that is, excess above Rs. 20 was to be (not scrutinized but) taxed with half judi. As to excess of Rs. 20 and under, no change was to be made for a definite time. "In other respects the settlements made will remain unaltered during the 30 years for which the assessment of the district is guaranteed." Clearly the exemption of excess of Rs. 20 and under ended with the 30 years' guarantee. This being decided, the following proposals made by Colonel Anderson, Survey and Settlement Commissioner, are to be adopted, *viz.*, (1) at the end of the 30 years' settlement to charge excess of Rs. 20 and under half judi at the *old* and not the *revised* rate of assessment, which is according to the orders of 1875, and (2) in the few cases where the excess at the time of original settlement is not known, to put on as judi at one quarter of the present excess, because it is sure to be more than the old excess. (G. R. No. 5994, dated 11th October 1881.)

18. The principle laid down in Government Resolution* No. 813, dated 25th February 1869, should be followed in disposing of the half judi leviable on the surplus profits of the watans of the village officers in alienated villages after provision has been made for the remuneration of the village officers according to scale. (G. R. No. 3953, dated 16th May 1885.)

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* Memorandum from the Revenue Commissioner, S. D., No. 454, dated 9th February 1869—Submitting for orders a letter from the Collector of Kaládgi relative to the remuneration of Patels and Kulkarnis as fixed by the Survey Department in the lately surveyed alienated villages noted in the margin; and

Chondi, Nagore, Beelibhani.

19. A question was raised by the Commissioner, S. D., whether the rules issued by Government from time to time on the subject of imposing half judi on the unappropriated emoluments of watan lands held by Patels and Kulkarnis, were applicable to the pátilki watan which had been granted by the British Government to a certain person in March 1832 for repopulating a village and which was now held by the Patel of the village. The Commissioner observed that the imposition of half judi on unappropriated watan land emoluments, after providing remuneration for the officiator for the time being, according to the sanctioned scale, was, as explained in Government letter No. 331, dated 26th January 1860, in substitution for detailed enquiries and final settlement by the Inám Commission as to the rights of holders of watans to hold such unappropriated watan land emoluments free of any tax, and that as the pátilki watan in question had been granted in 1832 by the British Government it could not properly be argued that there was any defect in the title of the holder to all the unappropriated watan land emoluments free of any tax. Accordingly, he was of opinion that the rules and standing orders on the subject of imposing half judi were not applicable to the case in question. This opinion has been concurred in by Government. (G. R. No. 9481, dated 3rd December 1892).

20. A copy of the following memorandum from the Revenue Commissioner, N. D. (No. 1906, dated 20th June 1865) was forwarded to the Revenue Commissioner, S. D., with a request that when any revision of Patels' emoluments in the Deccan took place, the plan adopted in Khándesh might be extended to the Collectorates in the Southern Division.

"In reply to the Chief Secretary's Memo. No. 2465, dated 12th instant, the Revenue Commissioner, N. D., begs to state that the Patels in the surveyed districts of Ahmedabad, where alone the revision of the village expenses in respect to Gujarát has been undertaken, the principle is to grant the Patels a contingent allowance at twice the amount given to Talátis for stationery under the Wingate's scale. In villages under peculiar circumstances the allowance is fixed at thrice the amount.

In lieu of the mulver abolished.

Vide G. R., No. 4646, dated 23rd November 1864, para. 8.

Vide para. 4 of the Resolution quoted above.

"2. In Khándesh the Patels get the same allowance as the Kulkarnis according to the Wingate Scale."

(G. L. No. 2777, dated 29th June 1865.)

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recommending, with reference to the question therein asked regarding the disposal of the one-half judi proposed to be levied by the Survey Department on the difference between the original value of the land and the judi the Patels and Kulkarnis now pay in those villages, that in alienated villages Government be pleased, for the reasons explained by him, to forego the profit they might in these cases claim, and that the judi be remitted to the Pátel and Kulkarni, or rather to the watan in each case.

RESOLUTION.—No judi should be levied in such cases.

(G. R. No. 813, dated 25th February 1869.)

21. As regards the fluctuating allowances to Patels and Kulkarnis, on no account must any attempt be made to alter or evade the obligation to fix every ten years the scale of emoluments according to the average of the preceding five years. The scale may be modified after a revision of the general assessment of a district, but not during the currency of a settlement made for thirty years. The official emoluments should be revised every ten years on the average of the five preceding years, but no alteration of scale will be made except at a general revision of the assessment of the district. The appropriateness of the scale will then come under review; for all intermediate revisions no alteration of scale will be necessary. Alienated shares of revenue should follow the same rules as Patels' and Kulkarnis' fluctuating allowances. (G. R. No. 1603, dated 21st April 1868, and No. 3814, dated 13th October 1868.)

22. Rules for fluctuating payments do not apply to amals held under summary settlement. (G. Rs. Nos. 2740, dated 17th July 1868; and G. R. No. 3977, dated 20th June 1882.)

23. Government Resolution No. 2740, dated 17th July 1868, cannot legally be applied to a title formally adjudicated on and rendered transferable and heritable by recognition under Section 4 of Act II of 1863. There is nothing in the Act to indicate that it was the intention of the Legislature to change the subject-matter of the property settled. (L. R. No. 699, dated 12th June 1893; *vide* G. R. No. 4341, dated 16th idem.)

24. It is clear that Government Resolution No. 1603 of 21st April 1868 does not modify the rule laid down in Government Resolution* No. 199, dated 18th January 1858, regarding the commutation every ten years of the emoluments of Patels and Kulkarnis and of alienated shares of revenue. The intention of the orders conveyed in paragraph 3 of the former Resolution, which was clearly explained in a subsequent Resolution No. 3814, dated 13th October 1868, was that the remuneration of Patels and Kulkarnis should be fixed every ten years in accordance with the rule laid down in the Resolution of 1858, but that if any alteration in the scale fixed at the survey for the calculation of the remuneration of these village officers was deemed to be necessary, it should be effected only at the time of a general revision of the assessment of a district or táluka.

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* "His Lordship in Council is fully convinced of the general expediency of the course recommended by you for adoption, which would effect the commutation of the fluctuating annual payment at present made on account of village and district officers' village expenses and alienated shares of revenue for fixed amounts calculated on the average receipts of the last five years, but subject to modification when the claims of the recipients are finally adjudicated by the Alienation Department, or after ten years. Government direct that the proposed commutation be at once carried into effect."

(G. R. No. 199, dated 18th January 1858 (para. 2).)

All payments of alienated shares of revenue which include saranjám amals should be regulated by the rule laid down in the Resolution of 1858. (G. R. No. 9688, dated 1st December 1885.)

25. A contingent allowance (equal in amount to that allowed to Kulkarnis by Wingate's scale for stationery should be given to Patels for lighting and repairing chávdis and for other miscellaneous expenditure. It is to be given to Patels in Karnátik as well as in the Deccan.

The allowance is to be given when the scale of remuneration comes under revision, either on or after the introduction of the survey assessments.

Patels in lapsed villages are to receive the allowance when their emoluments are being settled for the first time.

(G. R. No. 3904, dated 14th August 1871.)

26. In Kánara each hamlet should have a separate Patel in all cases in which the Collector is satisfied that the revenue and police administration of a hamlet cannot be properly carried on by the Patel of the parent village.

In villages the revenues of which are under Rs. 100, a fixed allowance of Rs. 5 is to be granted, in addition to the percentage on revenue. In other villages the scale should be as follows :—

When the revenue is between	Rs.	100	and	200	Rs. 4.
Ditto	„	200	„	300	„ 3.
Ditto	„	300	„	400	„ 2.
Ditto	„	400	„	500	„ 1.

When the revenue is below Rs. 100, nothing is to be granted beyond the fixed allowance of Rs. 5. In villages of which the revenue is between Rs. 100 and Rs. 500, there is to be allowed a percentage of 3 per cent. in addition to the fixed allowance, and in those with revenue exceeding the latter amount, that percentage alone without any fixed allowance. His Excellency in Council will, however, not object to increase the fixed allowance to Rs. 10 on special report from the Collector in cases in which it may be shown that the work of the Patel, in consequence of the position of his village or other circumstances, will be so hard as to occupy so much of his time as to preclude him from attending to his fields or otherwise earning a livelihood.

(G. Rs. Nos. 5611, dated 8th November 1871, and 402, dated 27th January 1872.)

27. The remuneration of the Shánbhogs or Kulkarnis in Kánara should be fixed at a maximum of Rs. 150 and a minimum of Rs. 120 per annum. (G. R. No. 3994, dated 12th July 1873.)

28. In calculating the sums due to Patels and Shánbhogs in Kánara, fractions of rupees should be omitted. (G. R. No. 4904, dated 30th August 1873.)

29. The office of Shanbhogs in Kánara is not to be considered hereditary, but the Collector should

select the best man available and appoint him to hold office during good behaviour. The Collector will no doubt show as much consideration as possible to the members of those families who have formerly held office. (G. Rs. Nos. 5611, dated 8th November 1871, and 3994, dated 12th July 1873.)

30. It is extremely inadvisable to remunerate Patels and other village servants partly by the remission of assessment to tree-tax on liquor-producing trees enjoyed by them, both on account of the naturally fluctuating value of the remission and the probability of the exemption affording opportunities for the practice of fraud. (G. R. No. 4102, dated 19th August 1872.)

31. The following principles should be regarded in dealing with the question of the remuneration of village officers in districts in which revised settlements have been carried out :—

(1) That the officiators, those who do the work, should receive the full amount to which they would be entitled under the established scales.

(2) That the whole of the watan lands are liable by law (Section 23 of Bombay Act III of 1874) for the remuneration of the officiators.

(3) That it is bad policy to avoid present liability by the promises of permanent settlement, especially when half the benefit of that settlement will go to the non-officiators.

(G. I., R., A. & C., No. 415, dated 31st May 1877; *vide* G. R. No. 6412, dated 26th October 1877.)

32. The following is the scale of allowance to be paid to Village Accountants and Patels for collecting the one-anna Local Fund Cess :—

	Kulkarni.			Patels.		
	Rs.	a.	p.	Rs.	a.	p.
On collections exceeding Rs. 5 and not exceeding Rs. 10 ...	0	4	0	0	2	0
On collections exceeding Rs. 10 and not exceeding Rs. 25 ...	0	8	0	0	4	0
On collections exceeding Rs. 25 and not exceeding Rs. 50 ...	1	0	0	0	8	0
On collections exceeding Rs. 50 and not exceeding Rs. 75 ...	1	4	0	0	10	0
On collections exceeding Rs. 75 and not exceeding Rs. 100 ...	1	8	0	0	12	0
On collections exceeding Rs. 100 and not exceeding Rs. 125 ...	2	0	0	1	0	0
On collections exceeding Rs. 125 and not exceeding Rs. 150 ...	2	8	0	1	4	0
On collections exceeding Rs. 150 and not exceeding Rs. 175 ...	3	0	0	1	8	0
On collections exceeding Rs. 175 and not exceeding Rs. 200 ...	3	8	0	1	12	0
On collections exceeding Rs. 200 and not exceeding Rs. 225 ...	4	0	0	2	0	0

and so on.

When a Talâti has more than one village, the payment is to be calculated on the total collections made in all the villages comprised in his saja; but

this rule is not to be enforced in the case of khots. A khot who has more than one village should be allowed remuneration according to the scale sanctioned for each village separately. (G. Rs. Nos. 6183, dated 15th December 1870, 1650, dated 22nd March 1873, 2719, dated 12th May 1875, and 3497, dated 21st June 1875.)

The payment of percentage to village officers on collections of Local Funds sand and quarry fees is sanctioned.

The remuneration to be allowed to village officers for collecting the Local Funds Cess should be calculated not on the number of days each Patel or Táláti performs work in the village from which the cess is collected, but on the gross amount each collects. (G. R., F. D., No. 3143, dated 15th September 1879.)

33. The emoluments of Patels, Kulkarnis or hereditary village accountants and Talátis or stipendiary village accountants for the collection of the Local Fund Cess should be fixed for ten years on the average of previous five years' collections of the cess. These orders do not apply to Sind and the Kánara District.

G. Rs. Nos. 2847, dated 4th June 1878, 3931, dated 5th August 1878, 4964, dated 20th September 1880, and 163, dated 10th January 1881.)

34. Remuneration is not to be granted to village officers in alienated villages for the collection by them of the Local Fund Cess. It is for the alienees and not Government to remunerate them for collecting the cess. (G. Rs. Nos. 2057, dated 20th April 1880, 5177, dated 20th September 1880, and 349, dated 18th January 1881.)

35. The rules for the assessment of the Local Fund Cess in alienated villages are given in Section 7 of (Bombay) Act III of 1869, and the following section provides that the cess shall be levied 'in the same manner and under the same provisions of law as the ordinary land revenue,' that is to say, the cess is leviable from the superior holders of alienated villages (fixed in accordance with the said rules) as the ordinary land revenue is. The same section, (Section 8) further provides that the superior holder is entitled to the same assistance in recovering the cess from the inferior holders to which he is lawfully entitled in recovering his dues on account of rent or land revenue.

The superior holder may receive payment of the cess direct from his tenants or inferior holders without the intervention of the village officers, for there is no provision of law which requires such payments to be made through the village officers. Section 85 of the Land Revenue Code refers to payment of dues on account of rent or land revenue and does not apply to payment of Local Fund Cess.

The superior holders are not bound to employ the village officers as their agents for collecting the cess;

neither are the latter bound to collect the same, as such collection is no part of the duties attaching to their hereditary office.

As regards unalienated villages, the cess must necessarily be levied from the occupants of survey numbers and by such agency as Government may appoint for the purpose of collection. It appears that village officers are employed for this purpose and are paid a percentage on their collections; but it is, of course, open to Government to appoint or employ whatever agency may appear most suitable.

Inámdárs are bound by the terms of their sanads to pay the amount due on account of Local Fund Cess from their villages, and they are free to employ whatever agency they may see fit in collecting the same from the rayats; but the expense of collection constitutes no lien either on the Local Funds or on Government. All that the Inámdárs are entitled to is the assistance in collecting the cess to which they are entitled under Section 86 of the Land Revenue Code in collecting their dues. If they wish to employ the village officers as agents to collect the cess, the latter will be quite justified in refusing to act unless they are paid reasonable remuneration.

The Inámdárs have no cause of complaint, because whatever amount of Local Fund Cess they pay in to Government they recover, or can recover, from their tenants. So far they pay nothing themselves towards the undertakings effected by the Local Fund Committee for the benefit of the whole district. There is, therefore, no hardship whatever if the Inámdárs have to employ an agency in expecting them to pay for it themselves. (L. R. No. 568, dated 18th May 1882; *vide* G. R. No. 3761, dated 10th June 1882.)

36. By Section 8 of the Bombay Local Funds Act, 1869, Local Fund Cess is directed to be levied in the same manner and under the same provisions of law as the ordinary land revenue. In the case, therefore, of an alienated village the cess is to be levied like the ordinary land revenue from the superior holder of that village, *i.e.*, from the Inámdár. The agency to be employed in the collection of the cess from Inámdárs, as well as from all other persons directly liable to Government for its payment, is left by the section to the discretion of the Collector, and he exercises this discretion by employing for the purpose the same Revenue officers who collect the ordinary land revenue. In unalienated villages the village officers are so employed.

By Section 44, clause (*b*), of the Bombay Local Boards Act, 1884, "the net proceeds (after deducting the expenses of assessment and collection) of the cess levied under the Bombay Local Funds Act, 1869," have to be credited to the Local Fund. This enactment authorizes the deduction from the gross proceeds of the cess of the cost of its collection.

The latter part of Section 8 of the Bombay Local Funds Act, 1869, authorizes Inámdárs to recover the cess, which they pay to Government, from their tenants, and for this purpose entitles them to the same assistance which the law (*i.e.*, Sections 86 and 87 of the Land Revenue Code) allows them in respect of the "recovery of their dues from their tenants and occupants under them."

It appears that this recovery of the cess from the tenants is made in alienated villages by the village officers on behalf of the Inámdárs.

There is no authority in the law for charging the cost of recovering the cess for an Inámdár from his tenants to the Local Fund, and the Local Boards would have a just cause of complaint if any such deduction were made by the Collectors from the gross proceeds of the cess.

As pointed out by the late Mr. Cordeaux in his No. 568 of 18th May 1882, the law really imposes no burden on Inámdárs on account of the Local Fund Cess, because whatever they pay in the way of cess they are entitled to recover again from their tenants. They escape, therefore, very lightly when nothing more than the cost of this recovery from their tenants falls upon them.

(L. R. No. 1557, dated 3rd December 1885; *vide* G. R. No. 10501, dated 31st idem.)

37. Remissions granted on the introduction of the revised settlements under Government orders relating to the gradual introduction of revised settlement rates should be taken into calculation, *i.e.*, not deducted, when revising the remuneration payable to village officers for the collection of Local Fund Cess. (G. R. No. 1822, dated 11th March 1893.)

38. Remuneration to village officers for collecting Public Works Irrigation Revenue is to be calculated and paid precisely as if the revenue so collected were the ordinary revenue of the village, that is to say, it will merely form one of the items on the aggregate of which the remuneration is calculated from time to time according to Wingate's scale.

Whenever irrigation revenue raises the revenue of a village 15 per cent. over what it was before, the Commissioner should revise the rates of remuneration to the village officers, although the term of ten years for which they have been fixed under Wingate's scale has not expired. (G. R. No. 3635, dated 28th June 1875.)

39. The following are the rules for the remuneration of village officers for collecting irrigation revenue:—

Rule 1.—If, at the expiration of five years from the time water for purposes of irrigation is made use of, the five years' average amount of irrigation receipts raises the revenue of a village 15 per cent., then the revision of the scale remuneration

fixed for ten years should take place before the expiry of the term.

Rule 2.—In unsurveyed villages, where the remuneration of village officers has not been fixed for ten years on an average of five years' receipts, the remuneration on irrigation revenue should be paid in the same way as the remuneration on land revenue is paid. In calculating this remuneration irrigation revenue and land revenue should be added together, and the remuneration calculated on the single sum thus obtained.

Rule 3.—In alienated villages where Government do not derive any land revenue, the remuneration on irrigation revenue should be calculated on that revenue alone.

Rule 4.— * * *. After the expiration of the term for which village officers' remuneration has been fixed, when a new settlement is being made for the next ten years, the Public Works revenue will form one of the items on which the remuneration is to be calculated.

(G. R. No. 769, dated 4th February 1876.)

40. Remuneration should be given to village officers for collecting irrigation revenue although the five years' average of irrigation receipts may not have raised the revenue of the village 15 per cent. (G. R. No. 2457, dated 8th May 1879.)

41. Irrigation revenue should be added to land revenue and the remuneration of village officers calculated upon the total. The grant of contingent allowance seems unnecessary in respect of the collection of irrigation revenue. (G. Rs. Nos. 177, dated 8th January 1887, and 6777, dated 11th October 1888).

42. In Government Resolution No. 1861, dated 5th June 1863, it was decided that the Patel should receive a quarter of an anna and the Kulkarni half an anna on each rupee of chauthai and nazarána levied from Kádim Inámdárs, and these rates were in Government Resolution No. 1654, dated 16th March 1876, extended to all items of land revenue derived by Government from alienated villages. Remuneration should be paid at the same rates for the collection of irrigation revenue in alienated villages. (G. R. No. 2675, dated 28th March 1884.)

43. The remuneration for the village officers of Sátára should be calculated according to Rose's scale, which is the one in force in that district, on the whole revenue, that is, land and irrigational revenues put together. (G. R. No. 2532, dated 18th April 1882.)

44. The allowances of Patels and Kulkarnis who are hereditary officers are not to be treated in the light of "salaries or service emoluments other than watans"* and

* *Vide* Clause V of the Rules of 25th June 1858, page 96 of Jacomb's Circular Orders.

written off if not claimed for two years. They should be retained in the books for six years. (G. R. No. 5453, dated 15th October 1880.)

45. Remuneration should be granted to village officers entrusted with the duty of collecting the tax leviable under the Bombay Highway Act, 1883, at the rate at which such officers are paid for collecting Local Fund revenue within their charges. (G. R. No. 2266, dated 15th March 1884.)

46. Talátis in the Thána District who may be entrusted in addition to their own work with the duty of collecting the revenues of izáfat villages under Government attachment situated in the neighbourhood of their sajas should be remunerated at the rate of Rs. 2 per cent. (G. R. No. 1624, dated 24th February 1885.)

47. The payment of chávdi or contingent allowance to village officers should be regulated according to the rules in force as regards the disbursement of remuneration to them, *i.e.*, the allowance may be retained in the accounts for a period of six years and the arrears subjected to the usual deduction rules. (G. R. No. 527, dated 21st January 1887.)

48. Assistant and Deputy Collectors are authorized to sanction the payment of arrears of chávdi and contingent charges for village officers. (G. R. No. 1037, dated 7th February 1891.)

49. The following rules for the collection of forest revenue by village officers in the Presidency proper and for the payment of remuneration to them came into force from 1st April 1887. The rules are applicable to all forest revenue, including grazing fees :—

I.—When the agency of village officers is in future employed in the collection of forest revenue they shall be remunerated by a deduction from the gross revenue collected at the time it is made over by them to Forest officers and at no other time.

Sums paid for grass reserves, &c., and not passing necessarily through the village books should not carry remuneration to village officers.

II.—The rate of remuneration payable shall be 6 pies in the rupee to the Patel and 9 pies in the rupee to the Kulkarni. In calculating the amount of remuneration due to any village officer, fractions of a rupee above eight annas shall be regarded as one rupee; all others shall be neglected.

III.—Village officers shall issue passes or grant receipts for revenue received from pass-books (in counterfoil, each leaf of which shall be numbered consecutively,) supplied to them by the Forest Department after entering the particulars in the counterfoils. When the passes are issued, the village officers shall take the signature of the persons to whom passes are issued on the counterfoils.

IV.—The collections made by the village officer shall be accounted for to the Forest officer when on his rounds, or when the village officer calls on the Forest officer for the necessary chalans. The village officer may accumulate his collections for a month, but not for a longer time. The Forest officer shall receive the money due from the village officer or give to the village officer a chalan for the full amount entered in the counterfoils, less the remuneration due to the village officer.

V.—The Forest officer, on receiving the amount or giving the chalan, shall obtain a receipt from the village officer for the remuneration deducted in the following form :—

Receipt for remuneration due for the collection of Forest Revenue by the officers of Village , *Taluka* , *District* , *from* 188 *to* 188 .

Name of Village.	Date of Collection.	Gross amount collected.	Remuneration due.		Net amount to be paid into Treasury.	Remarks.
			Rate.	Amount.		

Received Rs.

Date

Patel.

Received Rs.

Date

Kulkarni.

VI.—If in any village any difficulty be felt in obtaining the countersignature of the officers of the Forest Department, the Conservator may, after satisfying himself of the difficulty, authorize the Treasury or Sub-Treasury Officer concerned to receive forest revenue collected by village officers without the countersignature on the chalan by officers of the Forest Department. The officer receiving the money should see that the calculation of the remuneration is correct, and should send the chalan and the receipt for remuneration to the Range Forest Officer in whose accounts the receipts of such village are accounted for.

VII.—In the accounts kept by the Forest Department the gross amount of revenue collected shall be credited and the remuneration paid be debited to the appropriate heads of account.

VIII.—At the end of each month the Divisional Forest Officer shall, as prescribed in Section 143 of the Forest Code, draw a cheque for the amount of remuneration paid by himself and his subordinates during the month to be credited at the Treasury by transfer to Forest Remittances.

IX.—When revenue collected by village officers is refunded, the remuneration paid to the village officers for its collection need not be recovered unless the village officers are to blame in collecting it.

X.—The counterfoils of all exhausted passbooks shall be made over by the village officers to the Forest Department for record in that department.

XI.—Forest officers shall, occasionally, on their rounds, collect, if possible, passes granted by village officers and compare them with the corresponding counterfoils.

(G. Rs. Nos. 1511, dated 11th March 1887, and 4565, dated 19th July 1887.)

PART III.—GADKARIS.

1. Shortly after Mr. Rose became Collector of Sátára, that officer issued a circular, dated 3rd May 1855, ordering all Gadkaris'* holdings to be continued during the lifetime of existing incumbents and directing that afterwards they were to be made khálsát. Up to 1st May 1862 the holdings of 373 Gadkaris had consequent on that circular lapsed. There remained 1,191 Gadkaris. The majority of these were of ancient origin. On 8th September 1862 the Collector, Mr. Chapman, recommended that the fairest way of disposing of their case was to at once dispense with all service, to stop all cash payments, and to continue their holdings at half their assessment,—that is to say, on the terms laid down in Government Resolution No. 2606, dated 1st June 1861, for the disposal of Watandárs whose services though perhaps formerly of use are now not required either by Government or the community. Government considered the principle of the settlement proposed very fair as regards the rank and file, but directed that any special case which was not clearly one of service should be specially reported by the Collector, and that the half assessment was to be allowed only to the present incumbents and the heirs of present or late incumbents being their lineal descendants. It was not intended to exclude the heirs of Gadkaris whose holdings had already lapsed since the date of Mr. Rose's promulgation from the benefits of the settlement, but to prevent claims being put forward hereafter on the part of collateral relations and those who might have voluntarily thrown up their land or had been dispossessed. The hereditary title is to be applied only to the heirs of holders at the time when Mr. Rose in 1855 declared the holdings to be restricted as life-grants, and the sole effect of the orders passed by Government is to make the holdings continuable to the lineal descendants of those holders. (G. Rs. Nos. 541, dated 21st February 1863, 1111, dated 10th April 1863, 2109, dated 27th June 1863, 3088 dated 14th September 1863, and 2575, dated 9th July 1864.)

2. As regards "Tynats" continued hereditarily to the Gadkaris of the Parghad and Kullanidhi in the Belgaum District by Government letter No. 4118, dated 27th June 1849, in cases of proved poverty and destitution, a moiety or other portion of the "Tynat" may be continued to the widow of the last incumbent, who was the last surviving male descendant of the grantee during her lifetime, no service being exacted on account of the

* "Gadkari" is described by Molesworth as a soldier or peon serving in a hill fort. Their holdings were of very ancient origin, some having been conferred in the days of Shivaji. But it would seem that like the Amarámit tenure in other parts of India they were regarded under Native rule as resumable at pleasure. (L. R. No. 1375, dated 17th October 1889: *vide* G. R. No. 8474, dated 7th November 1889.)

† 4 W. R P. C., 121. 7 M. I. A. 188.

same. (G. R. No. 3087, dated 14th September 1883.)

3. Gadkari lands can be continued to brothers (including half brothers by the father's side) as well as adopted sons of the grantees in possession in 1855, but the concession is not to extend further. This indulgence should be allowed to have retrospective effect, but should not extend to any repayments in cash. (G. Rs. Nos. 5932, dated 10th November 1874, 5170, dated 10th September 1875, 6014, dated 25th October 1875, and 4154, dated 19th July 1876.)

4. Gadkaris should not be permitted to lease their lands. If allowed to do so they would practically be authorized to alienate them altogether. Any sávkár would at once perceive the loop-hole left open for him in the sanad,* and would force his Gadkari debtor to lease to him his service holding at a nominal rate on what would practically be a perpetual lease.

The privilege of adoption should be strictly limited to persons who were holders in 1855. If it were conceded to their brothers and descendants, Government would by so doing virtually alienate these lands for ever.

The order contained in Government Resolution No. 541, dated 21st February 1863, was that the lands were to be continued, but the holders were to pay as judi one-half of the assessment, and by "one-half of the assessment" must be held to be signified one-half of the survey assessment on the land according to the rates for the time being in force. In other words, the judi is liable to increase or decrease on a revision settlement.

(G. R. No. 8690, dated 28th December 1888.)

5. It is not intended by the orders in Government Resolution No. 8690, dated 28th December 1888, that all alienated Gadkari lands should be resumed. Unless the owners of Gadkari lands are informed of the terms on which they hold them it will not be fair to enforce such terms. The alienations previous to the issue of those orders should not therefore be disturbed. The lands can only be resumed in those cases if the family of the holder in 1855 has become extinct. (G. R. No. 4459, dated 21st June 1889.)

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* A form of the sanads to be granted to Gadkaris was sanctioned by Government Resolutions Nos. 1634, dated 27th February 1889, and 7801, dated 16th October 1889.

PART IV.—POLICE PATELS.

1. The wording of Section 5 of Bombay Act VIII of 1867 is not very clear, but the question whether the words 'so far as the same may be applicable' in clause 2 of Section 5 of that Act would warrant a Magistrate in refusing service from a Watandár or deputy who might satisfy the qualifications required by the watan law, but would be obviously of immature age for Police Patel's duty, may be answered in the affirmative, subject to the proviso that what might be immature age in one case need not necessarily be 20 in another, and that no rule on the subject can be laid down.

Section 5 while requiring appointments to be made according to the principles of the Watan Act so far as the same may be applicable cannot have intended to necessitate the appointment of a Watandár obviously unfit for the duties prescribed by the remaining sections of the Act. What may constitute such unfitness is a matter of some nicety which can only be decided in each case as it arises, but when the result of following in their entirety the provisions of the watan law would be to compel the Magistrate to appoint a person clearly unfit for the duties it might fairly be held that the provisions in question were inapplicable. In so far, however, as they did not lead to such a result they should be followed. (L. R. No. 1610, dated 22nd December 1887: *vide* G. R. No. 861, dated 8th February 1888.)

2. When the office of Police Patel has been customarily given to the Revenue Patel, the representative Watandár if fit for revenue office will presumably be also fit for police duty, and no question of nomination of a deputy will arise. If the representative Watandár is not qualified for the revenue duty and is allowed to appoint a deputy, the Magistrate can either select a Police Patel from the other representative Watandárs, if any, or if there are none, or none fit, can invest the deputy with the office of Police Patel.

When the office of Police Patel is held as a separate watan from that of Revenue Patel, if there be only one representative registered by the Collector and he is unfit to serve, but not unfit to nominate a deputy, the Magistrate should call upon him to nominate under Chapter VIII of the Watan Act. If there be more than one representative registered by the Collector, and the Watandár whose turn it is to serve is not fit, the Magistrate may appoint any other registered representative, and if none are fit, may call upon the Watandár whose turn it is to serve to nominate a deputy under Chapter VIII of the Watan Act. (G. R. No. 3057, dated 25th April 1889.)

3. In 1887 on a reference made from the Deccan in a case arising under Bombay Act III of 1874, the then Acting Remembrancer of Legal Affairs,

Mr. Fulton, traced, but not quite from the beginning, the history of "the Patel." This together with his opinion (No. 1058, dated 12th August 1887*) is given at length in the preamble to Government Resolution No. 5902, dated 2nd September

*Memorandum from the Remembrancer of Legal Affairs, No. 1058, dated 12th August 1887:—

"The provisions of Section 6 of Regulation XII of 1827, which remained in force till the passing of Bombay Act VIII of 1867, were as follows:—

> The police of each village shall be under charge of the Patel or chief manager of the revenue thereof and shall be conducted as prescribed in Chapter VI. The officer shall be furnished with a written commission in the form of Appendix C, but in the event of his occasional absence, the duties, with the exception of adjudging punishments, shall be carried on by the person next to him in responsibility and influence at the village. When the village revenue management is divided among different persons, the Magistrate shall select one of them to make charge of the police, and if the revenue arrangements are of such a nature as not to devolve particularly on any person resident at the village, the Magistrate shall select some one residing therein to perform the duty.'

"2. The next law on the subject was Section 5, Clause 2, of Bombay Act VIII of 1867, which provides that—

> 'In making the appointment (of Police Patel) the Magistrate shall have due regard to the provisions of Act XI of 1843 or other Acts in force for regulating the services of hereditary officers so far as the same may be applicable; but when the Revenue Patel is not appointed Police Patel and more persons than one claim by reason of hereditary right to perform the duties in rotation or otherwise, it shall be lawful for the Magistrate of the district to appoint the most fit from among their members.'

"3. The second sentence of this clause is not quite so free from ambiguity as might be desired, but I think it is clear that in cases in which the Revenue Patel is not appointed Police Patel the Magistrate's choice is restricted to those who claim by reason of hereditary right to perform the duties by rotation or otherwise, when there are such claimants. This of course implies that the claimants must have hereditary right to perform the duties, for a mere allegation of such right will not satisfy the requirements of the section. It cannot properly be said that a person claims by reason of hereditary right if he merely alleges such right without possessing it. A difficulty arises as to the meaning of the expression 'the duties.' Looking to Regulation XII of 1827 one might be inclined to hold that the words related to the revenue duties and that it was only from among persons who rightfully claimed by reason of hereditary right to perform the duties of Revenue Patel that the selection could be made. It might be said considering Section 6 of Regulation XII of 1827, which was only repealed when Bombay Act VIII of 1867 came into force, that no one could possibly claim of hereditary right to perform the duties of Police Patel unless he was also entitled to perform the duties of Revenue Patel. But I think the expression must refer to 'the duties of Police Patel,' and the answer to the above objection must be that Section 6 of the Regulation must not be construed too literally, that the expression 'village revenue management' meant no more than the Patelki or administrative headship of the village which was originally one office, and that the section simply intended that one of the Patels was always to be given a sanad empowering him to take charge of the village police and the Magistrate was not to appoint an outsider so long as a Patel resident in the village was available. I do not think it meant to prohibit the appointment of any Patel to whom custom did not assign a share in the duty of collection of the revenue, though such would have been its effect if it had been understood in its narrowest sense.

"4. In practice, however, I think it must have been liberally interpreted, for instances are, I believe, numerous both in the Dekkan and in North Gujarát where so far back as the records go the offices of Revenue and Police Patel have always been held.

1837. He shows that when the Deccan first came under English dominion there was but one such officer recognized, *viz.*, the Revenue Patel; that construing the expression of Regulation XII of 1827 literally "no one could possibly claim of hereditary right to perform the duties of *Police* Patel unless he was also entitled to perform the duties of Revenue Patel;" that the office of Patel, the administrative headship of the village, was *originally one office*: that, construing the Regulation not too literally, in settling the register of Watandárs the Collector of the District was to decide what was the *custom* of the watan, and that if he found that "one branch has by custom acquired the sole right to serve as Police Patel, he can register such right, and the Magistrate who makes

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by separate families or separate branches of the same family. Probably in this respect the customs of various villages and various parts of the country differ considerably. In the famous report of 1819 on the territories conquered from the Peshwa we find the Honourable Mountstewart Elphinstone writing as follows:—

'The Patels are the most important functionaries in the villages and perhaps the most important class in the country. They hold their office by a grant from the Government (generally from that of the Mogals), are entitled in virtue of it to lands and fees, and have various little privileges and distinctions of which they are as tenacious as of their land. Their office and emoluments are hereditary and saleable with the consent of Government, but are seldom sold except in cases of extreme necessity, though a partner is sometimes admitted with a careful reservation of the superiority of the old possessor. The Patel is head of the police and of the administration of justice.'

"5. The statement of the Collector of Dhárwar quoted in Government Resolution No. 4157 of 10th June 1886, that the office of Police Patel was created by the English Government appears inconsistent with the above extract which is suported by several other reports written about the same time, and the conclusion arrived at in the resolution is one which I most respectfully submit, though it may have been correct in the particular instance, cannot be accepted as of general application. Probably in most cases the patelki watan with its various revenue and police functions was originally the property of a single family, but as pointed out by Mr. Elphinstone, sometimes partners were admitted and this may account for the existence of separate taksims in some villages belonging to families of different castes. When such partition took place the duties may have been divided, and even where no alienation of any watan occurred and no family of outsiders was admitted into partnership it is easy to imagine that by custom the police duties may have been assigned to one branch of the family and the revenue functions to another.

"6. It was probably to provide for contingencies of this sort that the wording of Section 5 of Act VIII of 1867 was made to point directly to the hereditary principle recognised in Act XI of 1843, rather than to attempt to associate the office of Police Patel invariably with that of Revenue Patel.

"7. According to my view, then, Section 5 binds the Magistrate to appoint as Police Patel the person having sole hereditary right to that office if there is one, but in case there is no such person and there are two or three claimants having an hereditary interest in the office, the Magistrate is not bound to follow a particular order of rotation, but can select from among them. I do not think, however, he would be justified in selecting from a branch which in consequence of some ancient alienation or family custom had long lost its right to perform police duties.

"8. The question appears to me then to be entirely one of custom, and that can be decided by the Collector when prepar-

the appointment of Police Patel, will be bound to recognise it" under the Police Act. Government, however, in their Resolution quoted above guarded themselves from accepting the conclusion "that the office of Police Patel as now constituted was always associated with that of Revenue head of a village in all parts of the Presidency," but they accepted and allowed to be acted upon *in all parts of the Presidency proper* the view that the Collector preparing the register could decide what was the custom of the watan so far as the Police Patel was concerned, and if he found that the custom had invariably been for a particular family to do that duty, he could enter it in the register, and the register would thenceforward be binding on all parties.

In 1890 a reference was made to Government regarding a matádári watan from Gujarát, and the Remembrancer of Legal Affairs, Mr. Naylor, in his

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ing the watan register. Section 25 imposes on him the duty of determining the custom of the watan as to service, and in the register he can note down any rules or limitations which are authorized by custom.

"9. In cases in which there are distinct taksims belonging to radically different families and attached to distinct offices, I think as recommended in my report No. 1047, dated 9th instant, there is no objection to treating the several taksims with their respective offices as distinct watans. But, where as apparently in the present case, the different branches of family spring from one original Watandár it does not appear necessary to do so. The heads of the families can be registered as representative Watandárs of one watan. If the Collector thinks that one branch has by custom acquired the sole right to serve as Police Patel he can register such right, and the Magistrate who makes the appointment of Police Patel will, I think, be bound to recognise it under the first sentence of the clause from the Police Act above quoted.

"10. It will be observed that the mere fact of registration as a representative Watandár does not necessarily include the right to discharge at some time or other every function of Patel, for in each case it is the duty of the Collector to determine the custom of the watan after consideration of the practice heretofore observed from the earliest period for which there are records or other evidence available. The patelki was probably one, but in many villages it is now broken up into several parts though at the same time the whole taken collectively may still be treated as one office and the descendants of the original Watandár may still collectively be deemed to discharge the duties for which the watan was conferred upon their ancestor and may therefore properly be registered as representative Watandárs of one watan notwithstanding that each is entitled to perform only one particular portion of the duties.

"11. In regard to taksims held by separate families the case is somewhat different. There must at some period have been a creation of a distinct office probably with the sanction of or in consequence of the interference of the sovereign power; and all connection between the several fragments of the old watan appear severed. The various families have no reversionary or other interest in each other's taksims; and each constitutes for all practical purposes a separate watan which probably it would be found convenient to recognise as such in the registers.

"12. For the above reasons, I think the question whether the petitioner can be granted the exclusive right of performing police duties may be answered in the affirmative provided it is found that by invariable custom her family has always discharged the functions of police Patel and a decision to that effect is passed either by the Collector under Section 25 of the Watan Act or by Government under Section 79."

opinion No. 1019, dated 15th July 1890 *—appended to Government Resolution No. 5394, dated 2nd August 1890—gave a clear history of "the Patel" from an earlier date than that taken by Mr. Fulton. He showed that there was originally only one,—the Revenue—Patel, and that subsequently, during and

* Report by the Remembrancer of Legal Affairs, No. 1019, dated 15th July 1890:—

"The opinion printed in the preamble to Government Resolution No. 5902 of 2nd September 1887 is attributed by the Commissioner to me, but it was really submitted to Government by my *locum tenens* Mr. Fulton, and I have myself seen it now for the first time. It is not necessary for the purposes of the present reference that I should consider how far my views coincide with those which Mr. Fulton expressed with regard to a question affecting the operation of the Hereditary Offices Act in the Deccan only; but as regards the districts in which the Matádárs Act is in force, I am unable to discover any authority for the separate recognition by Government of a Police Patelship and a Revenue Patelship.

"2. The earliest Regulation on the subject is No. IV of 1818, Section 3 of which directed that 'Heads of villages should be heads of the Police of their respective villages,' and provided that 'in villages where there may be more than one headman coming under the denomination of Patels, Pátidárs or other designation, the person who collects the revenue and under whose authority the village servants act, shall be considered as the head of the village.' The object of this Regulation being, to quote from its preamble, to establish a system of Police 'founded chiefly upon the ancient usages of the country,' this early definition of the term 'headman of the village' leaves, I think, little doubt that the Ughrátdár, 'the person who collects the revenue,' was at that time deemed to be the person in whom the custom of the country vested the right to exercise Police-powers also. Under the Native rule the collection of the revenue was the headman's principal duty, his *raison d'être*, so far as the ruling authorities were concerned; he, no doubt, exercised some Police-powers also, but they were little thought of. It is only under the British Government that the Police duties and powers have gradually assumed a greater importance than the revenue office, till now the Commissioner is able to speak of 'the subordinate office of Revenue Patel.'

"3. Regulation XII of 1827 followed the Regulation of 1818 in placing 'the Police of each village under charge of the Patel or chief manager of the revenue thereof,' and provided that 'when the village revenue management is divided among different persons, the Magistrate shall select one of them to take charge of the Police.' This Regulation continued to be the law of this presidency for forty years, until, in 1867, the late Sir Barrow Ellis brought in the Village Police Bill. But it does not appear from the proceedings in Council at the passing of that Bill (Proceedings of Bombay Legislative Council VI, 73—74), that there was any intention of altering the law as regards the charge of the Village Police which had hitherto prevailed. The Village Police Act was, in fact, introduced as a supplement to the District Police Act, and in moving its second reading Sir Barrow Ellis said: 'There was very little that was new in the Bill, it being merely a re-enactment of portions of Regulation XII of 1827, which related to the Police, with such modifications as were necessary to fit the provisions of that Regulation into the system which had been approved and settled by the Council in the Bill (the District Police Bill) which had just been read a third time and passed.' The present Section 5 of the Village Police Act was substituted by the Council, on Sir Barrow Ellis' motion, for the section which originally appeared in the Bill, but there is no indication in the few words with which Sir Barrow Ellis introduced his motion that any radical change of system was contemplated. His reason was, he said, 'that as the clauses of the section originally stood, the meaning was not very clear, and there appeared to be some fear that there might be a collision between the provisions of one clause and those of another, and besides he had not felt at all satisfied that the whole

because of British rules and regulations the Police Patel as now constituted was evolved from him. Mr. Naylor construed strictly the Regulation which Mr. Fulton considered need not be too narrowly construed, but both arrived at the very conclusion which Government had guarded themselves from.

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would fit into the requirements of the Hereditary Offices Act.' He went on to say it was difficult to frame any section which might not be difficult to work in connection with the Hereditary Offices Act, but he trusted that that Act would ere long be amended and in the meantime 'under the amendments as he had now framed them, there would, he believed, so far as could be foreseen, be no difficulty in making the appointment of efficient Patels.'

"4. Clause 2 of Section 5 of the District Police Act requires that in making the appointment of Police Patel, the Magistrate shall have due regard to the provisions in force for regulating the service of hereditary officers, and by making a special provision for the case in which the Revenue Patel is not appointed Police Patel, it clearly contemplates, in my opinion, the continuance of the system in vogue since 1818, under which, as a general rule, the Revenue Patel had charge of the Police.

"5. Under this system it appears to me that a patelship may be fairly and properly defined as an hereditary office for the discharge of certain revenue duties in a village, with the right thereto attached of the officiator's being appointed to have charge of the Village Police, except in the case of its being found necessary to have more officiators than one, when, if the latter part of Section 5, Clause 2, of the Village Police Act applies, the Magistrate has a right of selection from amongst other Watandárs.

"6. This is the system, with reference to which the definition of 'hereditary office' in Section 4 of the Hereditary Offices Act and of 'matádár family' in Clause (1), Section 2 of the Matádárs Act must be deemed to have been framed, and they are, I think, entirely consistent with it.

"7. The term 'Patel' is nowhere defined, for the reason presumably that such a definition was not deemed necessary. But the Matádárs Act does not empower the Government to define what constitutes the office of Patel in any given case; and in exercising the power conferred upon it by the proviso to Section 6, it is not, I think, competent to it to do anything beyond what the proviso contemplates, *viz.*, to declare that 'the right to the Patel's office appertains exclusively to one matádár family.'

"8. Supposing that in the case in question Government should think fit to declare that the right to the Patel's office appertains exclusively to the No. 1 family—a point as to which I do not understand that my opinion is desired—that right will thereupon vest, under Section 14 of the Matádárs Act, in the representative Matádár of that family alone, *i.e.*, he will succeed by hereditary right to the revenue duties, and the Magistrate recognising his hereditary claim will appoint him under Section 5 of the Village Police Act to be Police Patel. But if, at any time, the Collector decides under Section 13 of the Matádárs Act that two or more officiators are requisite, the representative Matádár must, if his services are not dispensed with by the Collector under Section 19 and he is not disqualified under Section 30, officiate himself and appoint, under Section 20, one or more deputies, who, under Section 21, must be members of a matádár family of the village. In this case other members of matádár family besides the individual in whom the exclusive title vests would get into office, which appears to be to some extent what the Commissioner wishes to secure, but there would be no right in any particular matádár or matádár family to act as deputy or to be appointed to either police or revenue duties. The selection of the Police Patel would also not rest with the Magistrate under the latter part of Clause 2 of Section 5 of the Village Police Act, because the circumstances there described would not arise, but the appointment might fall to the Collector under Section 22 of the Matádárs Act in default of the representative Matádár."

endorsing when issuing Resolution No. 5902, dated 2nd September 1887, and so far from overruling Mr. Fulton's view as to the origin of the Police Patel, as suggested in paragraph 2 of the Commissioner's No. 1003-A., dated 7th March 1891, Mr. Naylor confirmed it. He, however, differed in construing the law strictly, and so far as Gujarát, where the Matádárs Acts in conjunction with Bombay Act III of 1874 constitute the law, is concerned, Government endorsed his opinion, and the consequence was that there the Collector could not, under Section 25 of Bombay Act III of 1874, since repealed, settle and enter in the register that the custom of the watan is for one family to have the Police Pátelship and its duties registered in his name solely, and that the office must go by rotation amongst the matádárs.

The "Mukhi" was the "Chief" revenue collector; the other 'matádárs,' 'pátidárs, or bhágdárs, it is true, collected the shares of their respective 'matás,' 'pátis' or 'bhágs' and brought them to him as "Mukhi" or Chief. But he was himself the head of his own 'mata' and collected the revenues thereof. He was primarily responsible for the whole revenue of the village, and under him the village servants acted, and in paragraph 2 of Mr. Naylor's report it is shown that he as headman, *i.e.*, "Mukhi," was at the time of Regulation IV of 1818 the "head of the police" of his village, the person in whom the custom of the country vested the right of head or chief, "Mukhi," collector of revenue, with police powers. It is only since the introduction of British rule and the stricter codes of police regulations thereunder that the Police Patel has grown in importance, and the appointment is therefore coveted by all the matádárs. He combined the two functions, was therefore "Mukhi," and as owing to regular revenue settlements the work of collecting revenue became less responsible and more matter of routine, so did the office of Revenue Patel fall and that of Police Patel rise in popular estimation, and the word "Mukhi" losing its early significance as chief revenue collector—combined with head of the village police—by an easy transition came to be regarded as applicable to the *Police* Patel only. It appears evident that the present difficulties are due in great measure to the origin of the "Mukhi" having been lost sight of.

But when all allowance is made for that, the practical difficulty remains that the "Mukhi," whether he is Revenue Patel or not, is recognised all over Gujarát as the Police Patel, that in very many cases the duty has been performed hereditarily in one family since the introduction of British rule, and that a prescription ranging over from 60 to 80 years, which the Matádárs Acts do not however recognise, has thus been established.

4. A Patel who does not exercise the powers vested in him under Section 15 of the Village Police

Act for a period of two years may well be deprived of them. This course should accordingly be taken, and at the close of each calendar year, District Magistrates should submit to the Commissioners a list of those Patels who have not tried any cases under the Act referred to during the two previous years. (G. Rs. Nos. 8360, dated 1st November 1889, and 1888, dated 12th March 1890.)

5. The general instructions embodied in paragraph 14 of Government Resolution No. 8360, dated 1st November 1889, were not intended to be, and have not apparently been, observed as a hard and fast rule. Government are perfectly willing that the Commissioners should except from the effect of the orders in question individual Patels whom it would be advisable in the Commissioners' opinion to retain in possession of their powers under Section 15 of the Village Police Act. (G. R. No. 9213, dated 20th November 1896.)

PART V.—SHETIAS.

1. The Shetias should be relieved from formal Government service when no remuneration is available, but their position should neither be altogether ignored nor their right to honorary consideration denied. They are often useful as a medium of communication with the general body of traders and may be called upon to furnish occasional information, or to use their influence with their fellow-townsmen in return for the recognition by Government of their honorary position. Although it seems out of place to dismiss with the formality of law unpaid officers like these Shetias, the Collector might appropriately refuse to communicate with one who had misbehaved and might demand the election of another member of the family. (G. R. No. 1336, dated 11th April 1860.)

2. The office of Shetti is of old standing and honourable in the eyes of the native community, and it seems inexpedient to interfere with its continuance. The Commissioner and Collectors should endeavour to put the services of the Shettis to some good use. (G. R. No. 6768, dated 10th September 1889.)

3. It is within the competence of Government to abolish Shetti watans generally, and though by the foregoing Resolution Government declined to exercise their undoubted power generally, that is no reason why, for given reasons in a particular case, their power should not be exercised. (G. R. No. 4920, dated 20th July 1891.)

PART VI.—SHETSANDIS.

1. Whether the reversion of Shetsandi holdings rests with Government, or the Inámdár, it must be always first considered whether the proceeds of the assessment are not required for the purposes for which the land was originally alienated, and when the number of Shetsandis is reduced, the assessment on the land held by the person so reduced should always be made available for those whose services are retained, unless their emoluments are already ample. (G. R. No. 3851, dated 9th November 1867.)

2. Any Shetsandi or Talwar in common with any Judi Inámdár may resign an entire survey number and obtain a reduction of his judi equal to the assessment of the land resigned.

A Shetsandi or Talwar holding only one survey number and having to pay judi thereon, may resign the entire number and receive a cash payment equal to the assessment hitherto alienated.

In the settlement of lands held by Talwars, whose services it is necessary to retain, some margin should be allowed; if the land emoluments which such a Talwar is actually holding are not according to the revised assessment more than 25 per cent. in excess of what he is entitled to according to the scale, the surplus should not be resumed, and only the excess over 25 per cent. should be added to the judi leviable. (G. R., J. D., No. 5789, dated 5th October 1879; *vide* G. M. No. 5220, dated 11th idem.)

3. When no one can be found willing to do service in return for an occupancy thrown up by a Shetsandi, the Collector and District Magistrate may sanction a cash payment for the service up to the amount of the revenue hitherto alienated for service, and if this is insufficient, a larger amount up to Rs. 48 per annum might be proposed by the Commissioner for sanction. (G. R., J. D., No. 4825, dated 11th July 1885; *vide* G. M. No. 6064, dated 25th idem.)

4. An allowance of Re. 1 per mensem may be given to each Shetsandi in the Dhárwár District while deputed to assist Circle Inspectors in their duties. (G. R. No. 8522, dated 15th December 1887.)

5. It is not justifiable to resume the land held by a Shetsandi for the performance of duties as a village servant in one village on the ground that the number of Shetsandis is in excess of that required for the village. The superfluous Shetsandis or Shetsandis who refuse to serve in villages other than those in which their holdings are, should be made to pay full assessment on the lands held by them for service. (G. R. No. 2101, dated 23rd March 1891, and G. R. No. 6093, dated 19th July 1894.)

6. The Shetsandis of Singhar and its neighbourhood in the Haveli Táluka of the Poona District are not Watandárs, their sanads contain no mention of hereditary right, and they are removeable

at the pleasure of Government. It also appears that there are only now left 78 of the original Shetsandis and that 66 squatters have been allowed to enjoy their holding so long without hindrance. If it could be ascertained exactly who are the descendants of the original Shetsandis and who the descendants of the mere squatters, the latter might be evicted at once, but it is impossible after such a lapse of time to discover who are the legitimate successors of the original Shetsandis and who are the squatters. In fact an attempt to ascertain this was previously made but proved ineffectual.

The Commissioner, C. D., proposed that the Shetsandis who were doing duty should be relieved of it and that they and the squatters and alienees (it being impossible to discriminate between them) should be allowed to retain their holdings on payment of full assessment, and that they should also be allowed such privileges in regard to trees as are enjoyed by other tenants. The Commissioner considered that the same terms should be offered to all the Shetsandis whether their holdings were inside or outside the forest demarcation line.

Government approved of the proposals made by the Commissioner, subject to the following modification as regards rights to trees. According to the terms of the sanads on which the Shetsandis occupy their present holdings, all the forests within their holdings are the property of Government and one of the duties of the Shetsandis is to protect these forests. It is therefore entirely at the pleasure of Government to grant or refuse rights to trees to the Shetsandis. It would in the opinion of Government be dangerous to allow the owners of holdings inside the Forest Reserve rights to trees, and the Shetsandis should therefore be given clearly to understand that those of them who own holdings outside the forest demarcation line will be granted the same rights to trees as are enjoyed by other tenants, but that similar rights cannot be conceded to those who own holdings inside the demarcation line. If, however, these latter will agree to take in exchange for the land held by them inside the Forest Reserve an equal or even slightly larger area of land outside the forest demarcation, where such land is available, the rights to trees other than royalty trees on such lands, outside the forest demarcation, will be granted to them. The exchange of lands on these lines should be carried out at once, wherever practicable, the rest of the land being gradually acquired as opportunity offers. The rights of Government to teak, which are undoubted, should be rigidly enforced.

(G. R. No. 7957, dated 8th November 1890.)

7. Though no judicial decision appears ever to have been obtained to the effect that Shetsandis are not hereditary officers within the meaning of Bombay Act III of 1874, there is every reason, on the

grounds given in paragraph 2 * of Mr. Naylor's No. 280 of 25th March 1887, for inferring that, as the High Court has in the case marginally noted held their lands to be resumable, the right of Government in respect thereof is exercisable under Rule 5 of the Rules in Government Resolution No. 1364 of 1878, and that Bombay Act III of 1874 has no application.

Secretary of State for India in Council vs. *Rámchandra Ganesh.*

The arguments in paragraph 10 † of Mr. Naylor's No. 452 of 26th March 1884, quoted in the preamble to Government Resolution No. 1793, Revenue Department, of 15th March 1888, furnish strong grounds for maintaining that Government may not merely assess to the full, land held for service otherwise than under Bombay Act III of 1874, but may actually recover possession of the actual land itself.

Ordinarily resumption means only the enforcement of the Government claim to the full assessments. But this is the case because of occupancy rights, or other estate in the lands, giving title to continued possession independently of the conditions on which the privilege of exemption had been held.

I. L. R., 9 Bom., 419.
I. L. R., 10 Bom., 112.
1 Bom. H. C. Rep., 22.

If in the case of service lands, however, the tenure itself, and not the mere exemption, was dependent solely on the performance of service when required, then the right to recover possession and not merely to resume the privilege of exemption could be exercised by Government as the grantor.

But for this purpose a suit would in each case be necessary to eject the alienee if he declined to vacate.

(L. R. No. 39, dated 7th January 1893; *vide* G. R. No. 1506, dated 24th February 1893.)

8. Copies of the following opinion of the Remembrancer of Legal Affairs, No. 741, dated 17th June 1893, were forwarded to the Commissioners and Collectors for information with the remark that the Governor in Council considers that in cases of unauthorized occupation of Shetsandi lands, the best

* "The question whether Bombay Act III of 1874 applies or not to Shetsandis' holdings must, therefore, still be regarded as a point which has not been judicially determined. The result of the suit, however, establishes the right of Government to resume such holdings, and as such a right is not excerciseable under Bombay Act III of 1874 and is exerciseable under No. 5 of the Rules issued with Government Resolution No. 1364 of 1878 (*vide* paragraphs 6 and 8 of my report on this suit No. 452 of 26th March 1884) it is a fair inference that the High Court considered the latter rule and not Bombay Act III of 1874 to apply to Shetsandis' holdings. But the absence of any explanation of the ground of the Court's decision leaves room for doubt as to what view it took."

† "With regard to the effect of resumption the defendant, no doubt, relies upon the fact that resumption by Government of a lapsed holding does not usually mean ousting the person actually in possession of the land, but simply the enforcement of the claim of Government to full assessment. In the case of lands not held for service this is the meaning of resumption and it has been so held by Government and by the High Court. But the reason for this is clear. So long as Government receives the full land

plan will be for the Collector to proceed by summary eviction, and that such eviction followed by failure on the part of the person evicted to regain possession in a test case, would place Government in a better position than success in a suit for possession so far as the prospect of other alienees vacating possession without resistance is concerned :—

"Section 61, Bombay Land Revenue Code, 1879, provides for the eviction of persons unauthorizedly occupying any land

(*a*) set apart for any special purpose, or which is

(*b*) unoccupied and unalienated.

"2. 'As the same expression is presumed to be used in the same sense throughout an Act,' the phrase 'set apart' in Section 61, Bombay Land Revenue Code, is presumably used in the same sense in which it is used in the only other part of the same Act in which it occurs, *i. e.*, in Section 38, where it applies to lands set apart for the specified purposes of free village pasturage, forest reserves, or other public or municipal purposes.

Maxwell on Interpretation of Statutes, page 394.

"3. The phrase 'set apart for special purposes' would not, it is submitted, be applicable to lands assigned to particular persons, held on an exceptional tenure or subject to restrictions affecting their alienability.

"4. The unauthorized occupation referred to in the Government memorandum under report could not apparently be dealt with as coming under the category of unoccupied and unalienated lands, for apparently possession was derived from the Shetsandis in occupation.

No. 4249, dated 13th June 1893.

"5. The Honourable Mr. Naylor in paragraph 7 of his No. 1986 of 7th December 1891 and Mr. (now the Honourable Mr. Justice) Fulton in paragraph 4 of his No. 138 of 31st January 1888, appear to have entertained no doubt that Section 61 and Section 202 would be inapplicable in such a case.

Government Resolution No. 8813 of 21st December 1891.

"6. Apparently it was the intention of the Legislature to limit the power of summary eviction to cases in which the unauthorized occupation is manifestly in conflict with, or in evasion of, the notorious rights of the State, as either incompatible with the purposes of a public appropriation, or as unaccompanied by any colour of right on the part of the trespasser.

"7. It may have been considered that land already occupied and alienated is not so manifestly at the disposal of the State as to justify summary eviction and a penalty on its occupation under colour of a title from a holder.

"8. Should Government direct, for the purposes of a test case, a summary eviction without recourse to the Courts, it is

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revenue due to the State in respect of such lands, it is a matter of indifference to Government who the occupants are, and it would be only inflicting an unnecessary hardship upon the former holders to oust them from the lands. But in the case of service lands these same considerations do not apply. The law expressly makes their continuance determinable according to such rules as Government see fit to make. The lands may probably be required for the remuneration of some other servant appointed instead of the person who formerly held them; and it is no hardship to a servant, whose service is at an end, to have to give up what constituted his remuneration as long as he performed service. In the case of the defendant, who is a mortgagee merely, the case is still stronger, for Government have never recognized him or his mortgage-transaction either, and he has no claim whatever to the consideration of Government."

probable that a suit by the transferee could be successfully resisted as to the [claim for recovery of possession, and if the Courts held the summary eviction was not warranted by the law, the damages might perhaps be only nominal. But it is submitted that a single decision establishing the right of Government to recover possession by suit, might, as the Commissioners observe, afford an equally effectual protection to the interests of Government."

(G. R. No. 4926, dated 7th July 1893).

9. The general effect of existing orders with respect to land alienated to persons not belonging to the Shetsandi families is that it will usually be preferable for the Collector to proceed by summary eviction of the alienee, resorting to civil suit for ejectment in case of resistance to the eviction. But the principles laid down in Government Resolution No. 6093 of 19th July 1894, show that non-officiating members of Shetsandi families, who are in the same category as the "superfluous Shetsandis" referred to in that Resolution, should not be called upon to vacate the land held by them, but only to pay the full assessment. The same principle also underlies paragraph 7* of Government Resolution, Judicial Department, No. 3036 of 9th May 1877. The non-officiating members of the family should be made to pay the full assessment of the land which they hold, and the amount so received should be utilized for the remuneration of the officiating Shetsandi. (G. R. No. 8313, dated 22nd October 1896.)

10. Any rent up to the full profit should in future be levied from non-serving members of Shetsandi family in possession of service inám land with due regard to the provisions of Nos. 4 to 6 of the amended rules† under Bombay Act XI of 1852 and Bombay Act VII of 1863. (G. R. No. 2825, dated 28th April 1898.)

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* 7. Where land in the occupation of a Shetsandi has to be resumed in consequence of his services being dispensed with, the possession of the land should not be disturbed, and the holder should be recorded as the survey occupant liable to the payment of the ordinary assessment. Similarly, where excess of land beyond what is required under the authorized scale has to be resumed, the possession of the land should be left with the holder, and a quit-rent equal to the difference should be imposed. Where waste land is available, and a Shetsandi is willing to serve, for rent-free land bearing an assessment of Rs. 24 in place of cash pay of Rs. 48, he should be permitted to do so: otherwise the payment should be in cash. (G. R., J. D., No. 3036, dated 9th May 1877.)

† Published in Government Notification No. 2824, dated 28th April 1898.

PART VII.—SIND VILLAGE OFFICERS.

1. It is to be regretted that any previous engagements of Government should diminish the receipts of the village officers' cess, but it would be still more to be regretted if there were any departure from scrupulous good faith in fulfilling those engagements.

When therefore the cess cannot be levied if the terms of a sanad are to be strictly fulfilled, the power to levy the cess should not be exercised. His Excellency in Council will leave it to the discretion of the Commissioner in Sind to decide in what cases Government is bound to forego the cess.

With regard, however, to villages entirely alienated on which the cess is leviable only if a village officer be appointed, it is observed that the holders of such villages are probably bound by custom or otherwise to make provision for satisfactory police management, and while village officers need not otherwise be imposed upon them without their consent, the Act gives Government the power to appoint a village police officer and levy the cess, if any such obligation is not satisfactorily fulfilled by the holders of the village.

(G. R. No. 7352, dated 15th September 1884.)

2. The term "introduction of settlement" used in Section 6 of the Sind Village Officers Act, 1881, can only be understood by reference to the Land Revenue Code, the law under which revenue settlements are made. Section 103 of that Code explains when a survey settlement shall be deemed to have been introduced. The extension of the term of an existing settlement is not accompanied by the formalities prescribed in that section and, therefore, cannot be held to be the introduction of a settlement. So long as the old settlement is merely extended it would be a misuse of language to say that there has been a "revision of a settlement." The continuation, therefore, of survey rates after the term of guarantee has expired cannot be held to be either the introduction or revision of a settlement within the meaning of Section 6 of the Sind Village Officers Act, 1881. (L. R. No. 1376, dated 13th October 1884; *vide* G. R. No. 8543, dated 29th idem.)

3. No pension or portion of pension granted under the provisions of Bombay Act II of 1888 should ever be paid from any source other than a cess levied under Section 6 of Act IV of 1881. This order does not overrule that part of the provisions of Article 860 of the Civil Service Regulations which provides in case of service paid partly from general revenues and partly from Incorporated Local Funds that if less than one-fourth of the pension would according to the rule of proportions be chargeable from either source, no distribution is made, the other source bearing the whole charge. (S. of S. No. 1, Legislative, dated 12th April 1888; *vide* G. M., F. D., No. 1892, dated 19th June 1888, and

G. R., F. D., Nos. 2150, dated 11th July 1888, and 3585, dated 27th November 1888.)

4. The entire cost of the village revenue establishments in Sind should be paid from the Village Cess Fund, without the aid of any contribution from Provincial Revenues.

The Secretary of State has laid down absolutely that pensions granted to the persons employed under the Sind Village Officers Act shall be paid only from the cess levied under Section 6 of the Act and from no other source.

(G. R. No. 112, dated 7th January 1889.)

5. Having regard to the provisions of Section 6 of the Sind Village Officers Act No. IV of 1881 as amended by Section 3 of the Bombay Act No. II of 1888, the cost of the construction of Tapedárs' deras or chávdis cannot be legally charged to the Village Cess Fund. Expenditure incurred on these works should therefore be debited to Provincial Revenues, from which it was met before Act No. IV of 1881 came into force. (G. Rs. Nos. 4561, dated 27th June 1889, and 7258, dated 13th October 1890.)

6. In the Sind districts the village cess should defray the charges for binding Tapedárs' books G. R., F. D., No. 1398, dated 20th April 1894.)

7. The Collectors and the Deputy Commissioners in Sind may appoint Tapedárs appointed under the Sind Village Officers Act as village accountants under Section 16 of the Land Revenue Code to make them amenable to certain penal provisions of that code. (G. R. No. 3727, dated 4th June 1898.)

PART VIII—VILLAGE SERVANTS USEFUL TO THE COMMUNITY.

1. No nazrána is to be levied in cases of adoptions by village servants useful to the community. (G. R. No. 3141, dated 21st June 1878.)

2. Looking to the definition of "hereditary office" given in Bombay Act III of 1874 it is impossible to hold that the provisions of that Act are applicable to village servants useful to the community, such as sutárs, lohárs, &c., whose duties are in no way connected with the administration or collection of revenue as laid down in the definition in Section 4 of the Act. (L. R. No. 416, dated 1st April 1881; *vide* G. R. No. 2188, dated 14th idem.)

3. Act III of 1874 does not apply to the watans of village servants useful to the community such as Kázis, Joshis, &c., in as much as their offices are not included in the definition of hereditary office given in Section 4 of the Act not being held "for the performance of duties connected with the administration or collection of the public revenue or with the village police or with the settlement of boundaries or other matters of civil administration."

The question then simply remains whether Section 4 of the Pensions Act applies to such watans. The answer depends on the nature of the property which constitutes the watan. If that property consists in an annual cash allowance payable from the treasury, Section 4 is applicable, but not under ordinary circumstances if it consists in service land. The provisions of the Pensions Act have been held inapplicable to suits for the partition of service lands (*vide* the remarks on page 27 of Indian Law Reports, VIII, Bombay) and they do not apply to suits for the possession of watan lands held by Kázis, Joshis, &c. The position is not altered by the fact of a non-service settlement having been accepted.

(L. R. No. 684, dated 19th May 1887; *vide* G. R. No. 3817, dated 23rd June 1887.)

4. Under Section 18 of Act III of 1874 the term "Watan" applies only to hereditary offices, watan property, and rights and privileges attached thereto. The term "Hereditary office" is limited to offices held for the performance of *duties* connected with the civil administration, whether those duties are now demanded or not.

The term "Watan property" is limited to property provided for the remuneration of such duties only. Section 18 therefore does not apply to any *services* unconnected with the civil administration, nor does it apply to any remuneration for such services, or to any rights and privileges attaching to such services or to such remuneration.

Whether the duties connected with civil administration are now required to be performed or not, the section would not apply to any other kind of services demanded either by the village community or by

individuals, the remuneration for which must be a matter concerning only those who perform such services and those who demand them.

(L. R. No. 644, dated 11th June 1888; *vide* G. R. No. 4273, dated 28th idem.)

5. The opinion of the Legal Remembrancer circulated with Government Resolution No. 4273 of the 28th June 1888 goes no further than to affirm that Section 18 of Bombay Act III of 1874 applies only to duties connected with Civil Administration. He does not affirm either that "baluta" or perquisites due by the villagers to Mahárs and Jaglyas are not leviable in respect of such duties or that Section 18 does not apply to "baluta" so leviable. The contrary is the fact. Under Section 18, the Collector is empowered to determine

(*a*) the nature and extent of the "duties" to be performed;

(*b*) the persons, &c., liable to perform the duties;

(*c*) the nature and extent of the right to "baluta;"

(*d*) the persons liable to make payment of such "baluta," either in money or kind as are leviable in respect of the duties.

There is no ground for the assumption that "baluta" are due to Mahárs and Jaglyas for private service only. This assumption was certainly not entertained by the framers of the Watan Act—a fact evidenced by the use in Section 18 of the word "duties," which must be taken to refer to the word "duty" employed in the second clause, and the word "duties" employed in the fourth clause of Section 4 of the Act.

Government are of opinion that "Section 18 as interpreted by Government Resolution No. 4273 of the 28th June 1888 is inapplicable only in cases of remuneration for services which are wholly unconnected with the Civil Administration, and which are of the nature of purely private services such as those of kumbhár, nhávi and the like. Mahárs also do private services of the same nature. But the Collector can differentiate and collect all 'baluta' which he deems due on account of duties connected with Civil Administration."

To sum up, Government consider the proper remedy for the insufficient remuneration for their public services of useful village servants who are ascertained to be underpaid is to recover from the landholders that contribution towards the remuneration for which they are legally liable. This recovery should be effected in the manner contemplated at the time of passing the Watan Act, namely, by action under Section 18 in the last resort, when all attempts at amicable settlement of the dispute between rayats and servants have failed. In such cases the Collector should hold an inquiry and pass a decision regarding the points specified in paragraph

1 of this Resolution. A very few examples will be sufficient to bring home to occupants their responsibility for payment of the "baluta" due for public duties. Individual cases in which the remuneration by cash and land for duties performed for Government are found to be insufficient, may be reported as at present. But before reporting them, the District Officers and Commissioners should carefully consider whether the alleged insufficiency of remuneration is due to the refusal by the rayats of "baluta," and whether sufficient cause exists for refraining from applying Section 18. (G. R. No. 3074 dated 3rd May 1899.)

6. Care must be taken that the customary services, due from Mahárs under Section 69 of the Watan Act, in connection with village sanitation, are not treated as private service to individuals. (G. R. No. 4273, dated 28th June 1888.)

7. The sanads issued to the village servants useful to the community prohibit alienations of property to which they relate. There is therefore no necessity for amending Bombay Act III of 1874 so as to bring such watans under its operation. Under the terms of the settlement, land which ceases to be held as remuneration for service to the village community may be resumed. (G. R. No. 512, dated 24th January 1882.)

8. The terms of the settlement made in the case of village servants useful to the community should be held applicable to all cases in which their service lands have ceased to constitute the remuneration of such servants, and the lands should be resumed at once irrespective of the date of alienation.

It should be borne in mind that by resumption in such instances is only meant the levy of full assessment from the person in occupation other than the original grantee or his descendants. The present holders should therefore be allowed to remain in possession on payment of the full assessment to which the lands are liable.

If the original holders or their descendants have thought proper to alienate their lands in which they had only a life-interest, and have thus deprived themselves of the remuneration provided for the performance of their duties, they themselves are alone to blame for their own action, and the Governor in Council does not consider them to be entitled to any consideration. The full assessment to be levied in the case of these alienations should accordingly be credited to Government.

(G. R. No. 6310, dated 25th August 1883).

9. The following opinion of the Remembrancer of Legal Affairs, No. 758, dated 4th June 1884, was concurred in by Government:—

"In this case the settlement was made, not with the Kázi's family, but with the family which so long ago as A.D. 1805 had purchased the Kázi's land. The sanad granted to this latter family

recognizes them as the holders of the land 'claimed as emolument appertaining to the office of Kázi,' and declares that that land shall be continued as the emolument of the office so long as the village community may require the services, on the conditions that the holders shall perform the usual services to the community and shall continue faithful subjects of the British Government.

"2. If these two conditions are fulfilled and the village community still requires the services, the land cannot, I think, be resumed. The mere fact that the land is held by strangers is not a sufficient ground for resumption, when the settlement was made with those strangers and the conditions of the sanad are fulfilled by them. They of course cannot in this instance perform the duties in person, because they are Hindus; but if they perform the services vicariously, that is, I think, a sufficient compliance with the sanad, and the land may be said to be 'in the enjoyment of the persons who perform the services' within the meaning of paragraph 2 of my memorandum No. 966 of 21st July 1883, quoted in the preamble of Government Resolution No. 6310 of 25th August 1883."

(G. R. No. 4996, dated 21st June 1884.)

10. The following case is on all fours with that decided in the foregoing Resolution No. 4996, dated 21st June 1884, except that the sanad was not issued to the holder but to the Inámdár, while during the enquiries held into the ináms it was clearly known to Government that they were in the enjoyment of strangers. In this case, so long as the two conditions, *viz.*, that the holders are faithful subjects of Her Majesty and services are required for the village community and have been and are being performed whether in person or vicariously, are fulfilled, there is no sufficient ground for resumption :—

A and B purchased land held as inám for services useful to the community many years ago. A happened to get a settlement sanad while B did not get it, but the position of A and B does not differ beyond the fact that A obtained the sanad endorsed on his own name, while in the case of B the sanad was issued to the Inámdár. B did not attempt at the time to get the sanad in his own name because there was a foot-note to the sanad stating that the issue of the sanad to a certain individual does not invalidate the rights of others if there are any.

(G. R. No. 656, dated 23rd January 1885.)

11. The following report of the Legal Remembrancer was communicated to all Commissioners and Collectors for information and guidance, with the instruction that the orders contained in Government Resolutions Nos. 512, dated 24th January 1882, and 6310, dated 25th August 1883, should be regarded

as applicable to cash allowances as well as to service lands :—

"The Commissioner, C. D., questions whether Government Resolutions No. 512 of 24th January 1882 and No. 6310 of 25th August 1883, authorize the resumption of cash allowances originally granted as remuneration to village servants useful to the community on attempted alienations thereof by the holders.

"2. The Resolutions in question do not expressly authorize such resumptions, as they mention only the resumption of land by levy of full assessment. But the intention of Government by implication appears to have been that the same rule should apply to cash allowances. The original reference on which these Resolutions were passed dealt with such cash allowances as well as with land, and after considerable correspondence, on which it was decided that the Bombay District Hereditary Offices Act should not be extended so as to apply to such offices, Government arrived at the conclusion that all the sanads which have been issued prohibited alienations of the property to which they relate.

In his No. R.-4875 of 9th December 1881, *vide* preamble to Government Resolution No. 512, Revenue Department, 24th January 1882.

The Commissioner, C. D., in reply to Government Resolution No. 5705, Revenue Department, of 30th September 1881 reported that this condition was included in all sanads issued to village servants useful to village communities in all the districts of his Division.

"3. The Bombay Hereditary Offices Act undoubtedly has no application to such cases (*vide* Government Resolution No. 5705, Revenue Department, dated 30th September 1881) and if a cash allowance is conditioned on performance of service by a particular family, it is I think perfectly competent to Government to withhold it from any claimant outside the family of the original grantees. Under the Pensions Act (XXIII of 1871) no suit could lie, should Government determine to withhold the allowance from the original grantee or from the person claiming as his transferee (Indian Law Reports, 1 Bombay 80).

Government may perhaps in order to avoid doubt in future consider it desirable to give express directions for the same rule to apply to resumption of such cash allowance as under Government Resolutions Nos. 512 and 6310 has been laid down with regard to *lands* held for similar services.

"4. In the instance referred to by the Commissioner, C. D., in paragraph 3 of his letter now under reference a condition against alienation was expressly included. In that particular case the allowance was necessarily inalienable out of the family as it was attached to a religious office. Government could not, of course, be liable to suit in case they determined to resume such cash allowance, but such grants are not in their nature resumable (West and Bühler, page 398), 'the holder of the office can be constrained, if necessary, to perform the duties when properly called on.' Government could withhold payment from any alienee outside the family, but it would be contrary to the general principles of the Hindu law to withhold the emoluments of a *religious* office from the family of the original grantee."

(L. R. No. 291, dated 20th March 1889; *vide* G. R. No. 2643, dated 5th April 1889.)

12. On the hypothesis that the lands have been rightly resumed, of the following questions, (*a*) is answered in the negative, which involves the negation of (*b*), and (*c*) to the effect that the lands should be entered as khálsa :—

(*a*) Can inám land resumed by reason of its alienation by the original grantee or his descend-

ants and entered in the accounts as khálsa by reason of such resumption be restored to the original holder on payment of the summary settlement judi, if at any time after resumption by Government the land again becomes the property of that holder?

(*b*). Can such land in that case be entered as inám without the sanction of Government and restored to the Inámdár?

(*c*) In cases where resumption has taken place in the form laid down in Resolution No. 6310, dated 25th August 1883, should the inám lands be entered as khálsa in the Government accounts or should they still be retained under the heading of inám, the full assessment merely being levied in view of the possible acquisition again by the original holder?

(G. R. No. 6898, dated 13th September 1890.)

PART IX.—SETTLEMENT.

1. The following instructions were issued by Government to the Revenue Commissioner for Alienations and were also communicated to the Revenue Commissioners, N. D. and S. D., for information:—

"His Excellency the Governor in Council being of opinion that the summary settlement of alienations now being carried out by your Assistant in Sátára, and the settlement of village officers' emoluments now in progress under the Collector, should include all lands, either wholly or partially alienated, I am directed to communicate the following observations for your guidance.

"2. Instructions have already been issued regarding personal and temple holdings.

This will include

Dharmadows,	Nanpurvesh,
Dehengis,	Balpurvesh,
Bakshish,	Dasuri,*

and other denominations under which personal holdings are entered in the accounts.

"3. There are some entries, such as 'kitta,' 'doubtful grants,' 'miscellaneous,' 'grants for services rendered,' regarding which preliminary enquiry will be necessary to ascertain whether or not the holdings are for service, and as such resumable at the pleasure of Government, or subject to rules other than those laid down for summary settlement.

"4. But besides these there is a large class of holdings appertaining to the district and village hereditary officers and to the village servants.

"5. The holdings of the following must for the present be merely recorded, pending a decision on the treatment of hereditary district officers' holdings:—

Deshmukh,	Kulasa Potdár,
Deshpánde,	Desh Chaugula,
	Naikvádi.

Whether or not the Nargaundi's and Sir Deshmukh's holdings are to be included in this class as watans, or liable to summary settlement as ordinary inams, is a point on which enquiry must be instituted; and I am directed to request that you will report on this question as soon as your Assistant has collected the necessary information.†

"6. The Collector will settle the future emoluments of the village officers and servants who are supposed to render service to Government, or who may be made to render useful service. These instructions have already been issued as to the scale of remuneration for Patels and Kulkarnis. The Collector will

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* People who go on pilgrimages—a kind of charitable grant.

† Mr. S. St. J. Gordon, Special Commissioner, in his letter No. 15, dated 27th June 1863, solicited the permission of Government—

1*st*—to deal with the Naikowdis according to local usage, that is to say, to treat as district hereditary officers those of them only who had hitherto been made use of as such, and to hand over the rest to be dealt with by the Collector under the rules applicable to *village* servants.

2*nd*—to settle the claims of Sir-deshmukhs, Sir-patels, Nargowndis, and others whose liability to serve was open to question, on the same principles on which the claims of other district hereditary officers were settled, where no special privilege was claimed; but where they objected to this, then to hand their cases over to the Collector to be dealt with under the Summary Settlement Rules as private inams.

Mr. Gordon's suggestions were approved by Government in Resolution No. 2555, dated 1st August 1863, subject to the modification proposed by Mr. Hart, Revenue Commissioner, S. D., namely, that any *cash allowances* which might be enjoyed by the claimants of the description mentioned in the second clause would, in the event of a refusal on their part to accept the zamindári settlement, have to be adjudicated under the amended rules of 1842, unless some general scheme for the settlement of claims to cash allowances was meanwhile sanctioned.

further have to consider whether, from the amount realizable by assessing the lands of those whose services are not required, the emoluments of the inferior servants who still perform duty may not be improved.

"7. It will be sufficient for your Assistant to record these holdings in statements, which should be submitted for subsequent disposal to the Collector. Mr. Inverarity will then dispose of the lands of Patels and Kulkarnis according to the orders already issued, and, while assessing the lands of inferior village servants whose employment is no longer useful to the community, will hold the amount of savings available for the better remuneration of those, who, like Mahárs and Rámosis, perform service to the State, but are often insufficiently remunerated.

"8. The holdings which, for the reasons assigned in the last two paragraphs, your Assistant will refrain from disposing under the summary settlement are as follows :—

1 Patel,	10 Mahár,
2 Kulkarni,	11 Turol,
3 Chaugula,	12 Rámosi,
4 Khot,	13 Rakhwaldár,
5 Gauda,	14 Mang,
6 Shettya,	15 Koli,
7 Chaudari,	16 Kolegar,
8 Kotval,	17 Ambekari.
9 Yeskur,	

"9. The remaining holdings of village servants may be divided into two classes—

1st.—For services which, though not useful to Government, are of use to the community.

2nd.—For services which, though perhaps formerly of use, are now not required either by Government or the community.

"10. In the first class are—

1 Kázi,	7 Khatib,	
2 Josi,	8 Sutár,	In agricultural villages without a large bazár; *vide* also para. 12 below.
3 Mulla,	9 Lohár,	
4 Guru,	10 Chambhár,	
5 Jangam,	11 Kumbhár.	
6 Muzávar,		

"11. In the second class may be placed—

1 Village Potdár,	12 Kumia,	
2 Mukdum,	13 Kalvantin,	
3 Maházun,	14 Therkuri,	
4 Dangay,	15 Beldár,	
5 Dangut,	16 Sikulgar,	
6 Awti,	17 Támboli,	
7 Mushrif,	18 Bhat or Taker,	
8 Putki,	19 Ghudri,	Except where part of a temple establishment, in which case under class 1.
9 Pakhali,	20 Gondhuli,	
10 Jingar,	21 Dowri,	
11 Mendhagur,	22 Bhoi.	

"12. There will also be found a number of holdings the entry of which in the first or second class must depend on the circumstances of the village in which they are found.

Among these may be enumerated the—

1 Nhávi,	5 Máli,
2 Purit,	6 Gaundi,
3 Simpi,	7 Kassar,
4 Teli,	8 Pinzari,

whose services may be considered as requiring special encouragement whenever, from the small size, or remote position, of the village, or other similar cause, the attraction of a small piece of rent-free land may not unreasonably be considered requisite to enable the villagers to retain the services of an

artizan, who, without such inducement, might with difficulty be persuaded to remain.

"13. The first of the above classes should be brought under summary settlement, and allowed to retain possession of their holdings on payment of one-fourth of the annual survey assessment for the time being. But, looking to the nature of these holdings, His Excellency in Council considers that nazarána on succession should not be exacted.

"14. Those in the second class no longer perform the services for which the grants were originally made; they should, therefore, be subjected to full assessment except grants under sanad by competent authority, which (if there be any such) should be continued with the holdings of the first class.

"15. The value of the assessment realizable under the second class should be reported to the Collector, who may be authorized to dispose of it for the better remuneration of the ill-paid useful village servants of the same táluka.

"16. The question whether the holdings referred to in paragraph 12 are to be placed in the first or second class, should be decided by your Assistant, in communication with the Assistant Collector in charge of the district, a decision being passed by the Collector in the event of a difference of opinion."

(G. L. No. 1915, dated 20th May 1860.)

2. The orders issued in Government letter No. 1915, dated 28th May 1860, regarding kalvantins' *village* holdings should be applied to the holdings of kalvantins generally. (G. R. No. 288, dated 17th January 1866.)

3. The correspondence which terminated in Government Resolution No. 283 of 1858 laid down the principle which should regulate the tenure of the land of kalvantins (professional prostitutes) at temples, and this should be taken as a guide in dealing summarily with their allowances.

No option should be given in the matter, and in all cases in which decisions have not been passed upon the wages of prostitution derived from the State, a compulsory payment of ten years' value should be made, and 20 years in instances in which, through an erroneous conception of the nature of the "duty" which was being perpetuated at the time of decision, allowances were declared either hereditary or permanent.

(G. R. No. 4226, dated 17th November 1866.)

4. The orders in Government letter No. 1915, dated 28th May 1860, which seem to solely refer to lands, are equally applicable throughout the Presidency to the cash allowances held by Balutas and Watandárs enumerated in paragraphs 8, 10, 11 and 12. (G. R. No. 3454, dated 5th August 1861.)

5. In order to prevent apparent hardship to the individuals who are holders of the class of village service lands described in paragraph 11 of Government letter No. 1915, dated 28th May 1860, which have been continued for services now not required either by Government or by the community, they may, instead of being subjected to full assessment, as prescribed by paragraph 14 of that letter, be subjected to *half* assessment for the purposes authorized in its 15th paragraph.

This rule should be made an uniform one, without respect to sanad or length of enjoyment, except in cases where the sanad may guarantee continuance *without service* which are cases not at all likely to be met with in this class of lands.

The class of ináms referred to in paragraph 12 of the letter quoted should be absolutely treated in the same manner, the remission of half the Government assessment appearing to be as much assistance as the villagers could reasonably expect from Government for the purposes of special encouragement adverted to in the same paragraph; the ináms of this class are so small that if the villagers find it necessary that the servant they wish to retain should not be obliged to pay *any* assessment, they could have no difficulty even in the smallest villages in making up by private arrangement what is required to meet the half assessment which is to be absolutely levied.

(G. R. No. 2606, dated 1st June 1861.)*

6. The lands of the four classes of servants noted in the margin when in agricultural villages without large bazárs, as well as of the eight classes mentioned in the 12th paragraph of Government letter No. 1915 of 1860, were left to be entered by the Collector in the first or second class respectively according to the circumstances of the village. If placed in the first class, one-fourth assessment was taken, and if in the second class full assessment was taken, but by subsequent orders only half assessment is to be levied on holdings of the second class. It should be left to the discretion of the Collectors, under the general control of the Commissioners, to decide whether the holdings should be placed in the first or in the second class. (G. R. No. 3225, dated 16th July 1861.)

Sutár, Lohár, Chambhár, Kumbhár.

7. In the Khándesh District, Halkaris (village servants who fill the water-troughs for the village cattle) should be allowed to retain their lands, without payment of one-fourth assessment, when the exemption hitherto enjoyed is not more than Rs. 30 annual value; and the orders of Government contained in their Resolution No. 3225, dated 16th July 1861, should be made applicable to all above that amount, which should pay the one-fourth assessment, provided that the exemption be not reduced below Rs. 30. When the circumstances of the village have so altered that a Halkari is no longer necessary, the land may be fully assessed. (G. R No. 23 03, dated 13th July 1863.)

8. Government letter No. 1915 of 1860 divided village officials into useful (as regards the commu-

*This Resolution was addressed to all Collectors, but the Revenue Commissioner, N. D., in reply to a reference from that officer was informed by Government memorandum No. 4490, dated 15th October 1861, that the Resolution had been sent to the Collectors of Gujarát and the Konkan for their information only and was not intended for their guidance.

nity) and the reverse, the former to pay one-fourth and the latter to pay full assessment. On Mr. Hart's recommendation (letter No. 866 dated 4th May 1861) these instructions were so far modified that the second class were to be subjected to half assessment only on their rent-free holdings, on the grounds that the hereditary district officers were to be allowed to retain fifty per cent. of their emoluments. Subsequently the district officers' settlement was reduced, and fixed at rates varying from four to six annas in the rupee. Mr. Hart then remarked that it remained with Government to consider whether a similar course should not be pursued with respect to the poorer classes of village Watandárs, and added that, as the previous settlement had been enforced, it would now be preferable to convert the eight-anna holdings into transferable tenures, and that the lands of those who paid four annas in the rupee should be regarded as service watans liable (in whosesoever hands they might be) for the service to village community for which they were held. Mr. Hart's letter No. 866, dated 4th May 1861, above referred to, distinctly pointed to the conversion of the watans paying eight annas in the rupee into *private property*, and Government entirely approved of his proposals. The right of transfer, therefore, should be looked upon as having been already conceded to these watans, and the view to be taken of the watans paying four annas in the rupee should be approved. (G. R. No. 2785, dated 23rd July 1864.)

9. The holdings of Shetias and Chaudharis in the Sátára Collectorate whose services are not required either by Government or by the village community should be subjected to the payment of judi equal to half the assessment. (G. R. No. 2953, dated 4th August 1864.)

The foregoing order (Government Resolution No. 2953) should be extended to any other Collectorate in which such extension may be urged in respect to similar holdings. The holdings after the application of the eight-anna assessment become transferable private property equally with those referred to in paragraph 4 of Government Resolution No. 2785, dated 23rd July 1864. (G. R. No. 3513, dated 17th August 1865.)

The order in Government Resolution No. 2953, dated 4th August 1864, should be extended, on the understanding that cases already decided are not re-opened, to *any* holdings in any Collectorate in which it is the case that the services of the Watandárs are alike useless to Government and the village community. (G. R. No. 4115, dated 2nd October 1865.)

10. Useless village servants in alienated villages, who render no service to the State, to the Inámdár, or to the villagers, and who do not hold from the alienee, should be required to pay, as their fellow classmen in Government villages do, eight-

annas in the rupee, with permission to have their holdings converted into private property with respect to transfer and succession.

Those who come under the class to which a four-annas' settlement has been given in Government villages cannot have a settlement offered to them, because the Inámdár is entitled to such services as may be rendered to Government in unalienated villages. If the Inámdár does not require the service, he may, on application to the Collector, have it commuted on the same terms as in a Government village, and receive the commutation in lieu of service.

(G. R. No. 2189, dated 23rd May 1865.)

11. Under Government Resolution No. 2189, dated 23rd May 1865, the kadim holdings of village servants useful to the community in alienated villages have not been subjected to the settlement applied to similar holdings in Government villages, on the ground that the inámdár is entitled to receive from the said servants such services as may be rendered by them to Government in unalienated villages. No kind of service is rendered by this class of servants either to Government or to village inámdárs as distinct from the service rendered by them to the public, and there is therefore no valid reason for excluding their holdings in alienated villages from settlement.

The bar placed by Government Resolution No. 2189, dated 23rd May 1865, is removed. These alienations should be subjected to settlement, like alienations of the same class in Government villages, under Government letter No. 1915, dated 28th May 1860, and subsequent Government Resolutions on the subject.

(G. R. No. 5696, dated 22nd July 1896.)

12. In the case of "Kadim" or ancient holdings of village servants in alienated villages useful to the community, but whose services are not required by the alienees, the latter have no claim to any payments made in commutation, which must be considered to be payable to Government, from which in reality these village servants hold. (G. R. No. 5770, dated 30th October 1880.)

13. The Collector of Belgaum having suggested that a certain assessment should be imposed on village Watandárs' holdings which were adjudicated under Act XI of 1852, in consequence of no service being required from them either by Government or the village, Government held that it was inexpedient to impose any assessment in cases where the parties had passed through the ordeal of an investigation by the Inám Commission, especially when it was borne in mind that all the land found in their possession in excess of the original grant had already been subjected to full assessment. If, however, the parties themselves wished to have their

lands converted into private and transferable property, then the option of doing so by a payment of of three annas in the rupee might be granted and sanads similar to those previously issued in the case of useless servants would then be issued. (G. R. No. 1194, dated 7th April 1866.)

14. In case of useless village servants in the enjoyment of (I) cash only, (II) land and cash, who refuse to extinguish their money claim upon the State, commutation money payments should be continued at a fixed rate as life grants, and stopped on the death of the *holders*. (G. Rs. Nos. 1269, dated 31st March 1868, and 3977, dated 20th June 1882.)

15. When there are sharers in the watan each enjoying the emoluments by rotation, and all refusing to accept money compensation, the allowances should be divided among the sharers rateably according to their claims, and the share of each resumed on his decease. (G. R. No. 4540, dated 14th September 1871.)

16. In the case of service watans below the rank of Pátels and Kulkarnis, legitimate male issues should, in the first instance, be considered as nearest heirs, and in failure of such heirs the male issues of prostitute daughters of the family may be selected, but in no case should any woman who has become a prostitute be recognised as heir. (G. R. No. 2266, dated 5th May 1874.)

17. The rules laid down in the Revenue Commissioner's No. 1550-A, dated 1st June 1864, for the settlement of the lands of village servants in the Kaira Collectorate were adopted by the Extra First Assistant Collector in the Panch Mahals. In these rules Bhavaias being classed as useless village servants, their lands were fully assessed. But their lands and those of other village servants, such as carpenters, potters, barbers, &c., were enquired into and recognised by Colonel Wallace in some villages before the cession of the Panch Mahals to the British Government. These lands may, therefore, be said to have been authorizedly in existence at the date of the cession, and cannot, under the terms of the Treaty, be resumed on the ground that service is not required; though, no doubt, they can be subjected to quit-rent in consideration of the service being dispensed with. The lands of Bhavaias and others who are altogether useless, should, therefore, in the villages settled by Colonel Wallace, as above stated, be subjected to a quit-rent of eight annas in the rupee and continued; and those of carpenters and other servants, who are still made to render service, be continued without the imposition of the four-anna quit-rent, which is usually placed upon the lands of these descriptions of village servants. (G. R. No. 972, dated 17th February 1875).

18. It should not be left undetermined whether or not any village servants are Watandárs; Sections

65 and 67 of Act III of 1874 require that registers shall be kept of the former. There appears to be no reason why No. 1 of the rules sanctioned in Government Resolution No. 7651, dated 28th December 1877, should not be applied to all Watandár village servants. The distinction between ancient and recent assignments is as regards them unnecessary and based on no substantial ground. In the case of inferior village servants who are not Watandárs the principle hitherto followed is to exempt them from a specified amount of assessment, and there is no reason why this principle should not be continued. The Commissioner may have power to reduce judi payable by Watandárs if the remuneration is insufficient, but the judi should in no case be increased beyond what is admissible under the rule above referred to. (G. R. No. 6241, dated 16th August 1895.)